

The Food Stamp Program



A Compilation of Regulations

Pertaining to

Retail Food Stores, Wholesale Food

Concerns and Financial Institutions



Food and Nutrition Service

Current as of January 8, 2003

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PART 271 -- GENERAL INFORMATION AND DEFINITIONS

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§271.1 General purpose and scope.

(a) Purpose of the food stamp program.

The food stamp program is designed to promote the general welfare and to safeguard the health and well being of the Nation's population by raising the levels of nutrition among low-income households. Section 2 of the Food Stamp Act of 1977 states, in part:

“Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation's agricultural abundance and will strengthen the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal

channels of trade by increasing food purchasing power for all eligible households who apply for participation.

(b) Scope of the regulations.

Part 271 contains general information, definitions, and other material applicable to all parts of this subchapter.

Part 272 sets forth policies and procedures governing State agencies which participate in the program.

Part 274 provides requirements for the issuance of coupons to eligible households and establishes related issuance responsibilities [including rules for the approval, implementation and operation of on-line Electronic Benefit Transfer (EBT) systems for the Food Stamp Program as an alternative to issuing food stamp coupons.

Part 278 delineates the terms and conditions for the participation of retail food stores, wholesale food concerns, meal services, and insured financial institutions.

Part 279 establishes the procedures for administrative and judicial reviews requested by food retailers, food wholesalers, and meal services.

§271.2 Definitions.

Access Device means any card, plate, code, account number, or other means of access that can be used alone, or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds under the Food Stamp Act of 1977, as amended.

Allotment means the total value of coupons a household is authorized to receive during each month or other time period.

Authorization document means an intermediary document issued by the State agency and used in an issuance system to authorize a specific benefit amount for a household.

Authorization to participate card (ATP) means a document which is issued by the State agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

Communal dining facility means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for supplemental security income (SSI) recipients, and their spouses, a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients, and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at

concessional prices to elderly persons or SSI recipients, and their spouses.

Coupon means any coupon, stamp, type of certificate, authorization card, cash or check issued in lieu of a coupon, or access device, including an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food Stamp Act of 1977, as amended, for the purchase of eligible food.

Coupon issuer means any office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has assigned responsibility for, the issuance of coupons to households.

Department means the U.S. Department of Agriculture.

Drug addiction or alcoholic treatment and rehabilitation program means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private, nonprofit organization or institution, or a publicly operated community mental health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). Under part B of title XIX of the Public Health Service Act is defined as meeting the criteria which would make it eligible to receive funds, even if it does not actually receive funding under part B of title XIX.

Elderly or disabled member means a member of a household who:

- (1) Is 60 years of age or older;
- (2) Receives supplemental security income benefits under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;
- (3) Receives federally or State-administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;
- (4) Receives federally or State-administered supplemental benefits under section 212(a) of Pub. L. 93-66;
- (5) Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act;
- (6) Is a veteran with a service-connected or nonservice-connected disability rated by the Veteran's Administration (VA) as total or paid as total by the VA under title 38 of the United States Code;
- (7) Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under title 38 of the United States Code;
- (8) Is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code;
- (9) Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to

compensation for a service-connected death or pension benefits for a nonservice-connected death under title 38 of the United States Code and has a disability considered permanent under section 221(i) of the Social Security Act. "Entitled" as used in this definition refers to those veterans' surviving spouses and surviving children who are receiving the compensation or pension benefits stated or have been approved for such payments, but are not yet receiving them;

(10) Receives an annuity payment under: section 2(a)(1)(iv) of the Railroad Retirement Act of 1974 **and** is determined to be eligible to receive Medicare by the Railroad Retirement Board; or section 2(a)(1)(v) of the Railroad Retirement Act of 1974 **and** is determined to be disabled based upon the criteria used under title XVI of the Social Security Act; or

(11) Is a recipient of interim assistance benefits pending the receipt of Supplemented Security Income, a recipient of disability related medical assistance under title XIX of the Social Security Act, or recipient of disability-based State general assistance benefits **provided** that the eligibility to receive any of these benefits is based upon disability or blindness criteria established by the State agency which are at least as stringent as those used under title XVI of the Social Security Act (as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI).

Eligible foods means:

(1) Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption;

(2) Seeds and plants to grow foods for the personal consumption of eligible households;

(3) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals; or meals served by an authorized communal dining facility for the elderly, for SSI households or both, to households eligible to use coupons for communal dining;

(4) Meals prepared and served by a drug addict or alcoholic treatment and rehabilitation center to narcotic addicts or alcoholics and their children who live with them;

(5) Meals prepared and served by a group living arrangement facility to residents who are blind or disabled as defined in paragraphs (2) through (11) of the definition of "**Elderly or disabled member**" contained in this section;

(6) Meals prepared by and served by a shelter for battered women and children to its eligible residents;

(7) In the case of certain eligible households living in areas of Alaska where access to food stores is extremely difficult and the households rely on hunting and fishing for subsistence, equipment for the purpose of procuring food for eligible households, including nets, lines, hooks, fishing rods, harpoons, knives, and other equipment necessary for subsistence hunting and fishing but not equipment for the purpose of transportation, clothing or shelter, nor

firearms, ammunition or other explosives;

(8) In the case of homeless food stamp households, meals prepared for and served by an authorized public or private nonprofit establishment (e.g. soup kitchen, temporary shelter), approved by an appropriate State or local agency, that feeds homeless persons; and

(9) In the case of homeless food stamp households, meals prepared by a restaurant which contracts with an appropriate State agency to serve meals to homeless persons at concessional (low or reduced) prices.

Federal fiscal year means a period of 12 calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

Firm's practice means the usual manner in which personnel of a firm or store accept food coupons as shown by the actions of the personnel at the time of the investigation.

FNS means the Food and Nutrition Service of the U.S. Department of Agriculture.

Food Stamp Act means the Food Stamp Act of 1977 (Pub. L. 95-113), including any subsequent amendments thereto.

Group living arrangement means a public or private nonprofit residential setting that serves no more than sixteen residents that is certified by the appropriate agency or agencies of the State under regulations issued under section 1616(e) of the Social Security Act or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act. To be eligible for food stamp benefits, a resident of such a group living arrangement must be blind or disabled as defined in paragraphs (2) through (11) of the definition of "**Elderly or disabled member**" contained in this section.

Homeless individual means an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:

(1) A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);

(2) A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized;

(3) A temporary accommodation in the residence of another individual; or

(4) A place not designed for, or ordinarily used, as a regular sleeping accommodation for human beings (a hallway, a bus station, a lobby or similar places).

Homeless meal provider means:

(1) A public or private nonprofit establishment (e.g. soup kitchens, temporary shelters), that feeds homeless persons; or

(2) A restaurant which contracts with an appropriate State agency to

offer meals at concessional (low or reduced) prices to homeless persons.

House-to-house trade route means any retail food business operated from a truck, bus, pushcart, or other mobile vehicle.

Identification (ID) card means a card which identifies the bearer as eligible to receive and use food coupons.

Indian tribe means:

(1) Any Indian tribe, Band, Nation, or other organized Indian group on a reservation for example, a Rancheria, Pueblo or Colony, and including any Alaska Native Village or regional or village corporation (established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688)), that is on a reservation and is recognized as eligible for Federal programs and services provided to Indians because of their status as Indians; or

(2) any Indian tribe or Band on a reservation holding a treaty with a State government.

Indian tribal organization (ITO) means:

(1) The recognized governing body of any Indian tribe on a reservation; or

(2) The tribally recognized intertribal organization which the recognized governing bodies of two or more Indian tribes on a reservation authorizes to operate the Food Stamp Program or a Food Distribution Program on their behalf.

Insured financial institution means a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) or financial institutions which are insured under the Federal Credit Union Act and which have retail food stores or wholesale food concerns in their field of membership.

Meal delivery service means a political subdivision, a private nonprofit organization, or a private establishment with which a State or local agency has contracted for the preparation and delivery of meals at concessional prices to elderly persons, and their spouses, and to the physically or mentally handicapped and persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

Nonprofit cooperative food purchasing venture means any private nonprofit association of consumers whose members pool their resources to buy food.

Program means the food stamp program conducted under the Food Stamp Act and regulations.

Regulations means the provisions of this subchapter. Regulatory citations refer to provisions of this subchapter unless otherwise specified.

Reservation means the geographically defined area or areas over which an ITO exercises governmental jurisdiction so long as such area or areas are legally recognized by the Federal or a State government as being set aside for the use of Indians.

Retail food store means:

(1) An establishment or house-to-house trade route that sells food for home preparation and consumption normally displayed in a public area, and either offers for sale, on a continuous basis, a variety of foods in sufficient quantities in each of the four categories of staple foods including perishable foods in at least two such categories (Criteria A) as set forth in §278.1(b)(1) of this chapter, or has more than 50 percent of its total gross retail sales in staple foods (Criteria B) as set forth in §278.1(b)(1) of this chapter as determined by visual inspection, marketing structure, business licenses, accessibility of food items offered for sale, purchase and sales records, counting of stock keeping units, or other inventory or accounting record keeping methods that are customary or reasonable in the retail food industry as set forth in §278.1(b)(1) of this chapter. Entities that have more than 50 percent of their total gross retail sales in hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption either for carry-out or on-premises consumption, and require no additional preparation, are not eligible for FSP participation as retail food stores under §278.1(b)(1) of this chapter;

(2) Public or private communal dining facilities and meal delivery services; private nonprofit drug addict or alcoholic treatment and rehabilitation programs; publicly operated community mental health centers which conduct residential programs for drug addicts and/or alcoholics; public or private nonprofit group living arrangements; public or private nonprofit shelters for battered women and children; public or private nonprofit establishments, approved by an appropriate State or

271.2

local agency, that feed homeless persons; or a restaurant that contracts with an appropriate State agency to provide meals at concessional (low or reduced) prices to homeless food stamp households;

(3) Any stores selling equipment for procuring food by hunting and fishing to eligible households in Alaska, as specified in the definition of eligible foods;

(4) Any private nonprofit cooperative food purchasing venture, including those whose members pay for food prior to receipt of the food; and

(5) A farmers' market.

Secretary means the Secretary of the U.S. Department of Agriculture.

Shelter for battered women and children means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

Spouse refers to either of two individuals:

(1) Who would be defined as married to each other under applicable State law; or

(2) Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

Staple food means those food items intended for home preparation and consumption in each of the following food categories: meat, poultry, or fish; bread or cereals; vegetables or fruits;

and dairy products. Commercially processed foods and prepared mixtures with multiple ingredients shall only be counted in one staple food category. For example, foods such as cold pizza, macaroni and cheese, multi-ingredient soup, or frozen dinners, shall only be counted as one staple food item and will normally be included in the staple food category of the main ingredient as determined by FNS. Hot foods are not eligible for purchase with food stamps and, therefore, do not qualify as staple foods for the purpose of determining eligibility under §278.1(b)(1) of this chapter. Accessory food items including, but not limited to, coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices shall not be considered staple foods for the purpose of determining eligibility of any firm. However, accessory foods that are offered for sale in authorized retail food stores are eligible food items, which may be purchased with food stamp benefits.

State means any one of the fifty States, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands of the United States, and the reservation of an Indian tribe whose ITO meets the requirements of the Food Stamp Act for participation as a State agency.

State agency means:

(1) The agency of State government, including the local offices thereof, which is responsible for the administration of the federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which

administer such assistance programs for the State agency, and

(2) The Indian tribal organization of any Indian tribe determined by the Department to be capable of effectively administering a Food Stamp Program or a Food Distribution Program in accordance with provisions of the Food Stamp Act of 1977.

Trafficking means the buying or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food; or the exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for coupons.

Wholesale food concern means an establishment which sells eligible food to retail food stores or to meal services for resale to households.

§271.3 Delegations to FNS for administration.

(a) Delegation.

Within the Department, FNS acts on behalf of the Department in the administration of the Food Stamp Program with the exception of those functions, which may be delegated to other agencies within the Department. The right is reserved at any time to withdraw, modify, or amend any delegation of authority. When authority is delegated to FNS, the responsibilities may be carried out by the Administrator or by another official of FNS, or by State agencies with respect to claims against households, as designated.

(b) Claims settlement.

FNS shall have the power to determine the amount of and to settle

and adjust any claim arising under the provisions of the act or this subchapter, and to compromise or deny all or part of any claim.

(c) Demonstration authority.

FNS is authorized to undertake demonstration projects which test new methods designed to improve program administration and benefit delivery. FNS is authorized to initiate program research and evaluation efforts for the purposes of improving and assessing program administration and effectiveness. The procedure for initiating and conducting these projects is established in part 282.

§271.4 [intentionally omitted as not relevant to stores]

§271.5 Coupons as obligations of the United States, crimes and offenses.

(a) Coupons as obligations.

Pursuant to section 15(d) of the Food Stamp Act, coupons are an obligation of the United States within the meaning of 18 United States Code (U.S.C.) 8. The provisions of Title 18 of the United States Code, "Crimes and Criminal Procedure," relative to counterfeiting, misuse and alteration of obligations of the United States are applicable to coupons.

(b) Penalties.

Any unauthorized issuance, redemption, use, transfer, acquisition, alteration, or possession of coupons, ATP cards, or other program access device may subject an individual, partnership, corporation, or other legal entity to prosecution under sections

271.5(b)(1)-(3)

15(b) and (c) of the Food Stamp Act or under any other applicable Federal, State or local law, regulation or ordinance.

(1) Section 15(b)(1) of the Food Stamp Act reads as follows:

“Subject to the provisions of paragraph (2) of this subsection, whoever knowingly uses, transfers, acquires, alters, or possesses coupons, authorization cards, or access devices in any manner contrary to this Act or the regulations issued pursuant to this Act shall, if such coupons, authorization cards, or access devices are of a value of \$5000 or more, be guilty of a felony and shall be fined not more than \$250,000 or imprisoned for not more than twenty years, or both, and shall, if such coupons or authorization cards are of a value of \$100 or more but less than \$5000 or if the item used, transferred, acquired, altered or possessed is an access device that has a value of \$100 or more but less than \$5000 be guilty of a felony and shall upon the first conviction thereof, be fined not more than \$10,000 or imprisoned for not more than five years, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than \$10,000 or, if such coupons or authorization cards are of a value of less than \$100, or if the item used, transferred, acquired, altered, or possessed is an access device that has a value of less than \$100, shall be guilty of a misdemeanor, and upon the first conviction thereof, shall be fined not more than \$1000 or imprisoned for not more than one year or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may

also be fined not more than \$1000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.”

(2) Section 15(b)(2) of the Food Stamp Act reads as follows:

“In the case of any individual convicted of an offense under paragraph (b)(1) of this section, the court may permit such individual to perform work approved by the court for the purpose of providing restitution for losses incurred by the United States and the State agency as a result of the offense for which such individual was convicted. If the court permits such individual to perform such work and such individual agrees thereto, the court shall withhold the imposition of the sentence on the condition that such individual perform the assigned work. Upon the successful completion of the assigned work the court may suspend such sentence.”

(3) Section 15(c) of the Food Stamp Act reads as follows:

“Whoever presents, or causes to be presented, coupons for payment or redemption of the value of \$100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act, shall be guilty of a felony and, upon the first conviction thereof, shall be fined not more than \$20,000 or imprisoned for not more than five years, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not less than one year nor more than five years and may

also be fined not more than \$20,000 or if such coupons are of a value of less than \$100, shall be guilty of a misdemeanor and, upon the first conviction thereof, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than \$1,000. In addition to such penalties, any persons convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act."

(c) Security for coupons and ATP's.

All individuals, partnerships, corporations, or other legal entities including State agencies and their delegates (referred to in this paragraph as "persons") having custody, care and control of coupons and ATP's shall, at all times, take all precautions necessary to avoid acceptance, transfer, negotiation, or use of spurious, altered, or counterfeit coupons and ATP's and to avoid any unauthorized use, transfer, acquisition, alteration or possession of coupons and ATP's. These persons shall safeguard coupons and ATP's from theft, embezzlement, loss, damage, or destruction.

[Note: paragraph (c)(1) is not relevant to stores and is intentionally omitted.]

(2) Any coupon issuer or any officer, employee or agent, thereof convicted of knowingly providing false information in the reports required under §274.5 shall be subject to a fine of not

more than \$10,000, or imprisoned not more than 5 years, or both.

[Note: paragraph (d) is not relevant to stores and is intentionally omitted]

(e) Forfeiture and denial of property rights.

(1) General.

(i) Any nonfood items, moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for food coupons, authorization cards, or other program benefit instruments or access devices in any manner not authorized by the Food Stamp Act or regulations issued pursuant to that Act, shall be subject to forfeiture and denial of property rights. Such property is deemed forfeited to the United States Department of Agriculture (USDA) at the time it is either exchanged or offered in exchange.

(ii) These forfeiture and denial of property rights provisions shall apply to property exchanged or offered in exchange during investigations conducted by the Inspector General, USDA, and by other authorized Federal law enforcement agencies.

(iii) These forfeiture and denial of property rights provisions shall not apply to property exchanged or intended to be exchanged during the course of internal investigations by retail firms, during investigations conducted solely by State and local law enforcement agencies and without the participation of an authorized Federal law enforcement agency, or during compliance investigations conducted by the Food and Nutrition Service.

271.5(e)(2)-(3)(ii)(D)

(2) Custodians and their responsibilities.

(i) The Inspector General, USDA, the Inspector General's designee, and other authorized Federal law enforcement officials shall be custodians of property acquired during investigations.

(ii) Upon receiving property subject to forfeiture the custodian shall:

(A) Place the property in an appropriate location for storage and safekeeping, or

(B) Request that the General Services Administration (GSA) take possession of the property and remove it to an appropriate location for storage and safekeeping.

(iii) The custodian shall store property received at a location in the judicial district where the property was acquired unless good cause exists to store the property elsewhere.

(iv) Custodians shall not dispose of property prior to the fulfillment of the notice requirements set out in paragraph 3, or prior to the conclusion of any related administrative, civil, or criminal proceeding without reasonable cause. Reasonable cause to dispense with notice requirements might exist, for example, where explosive materials are being stored which may present a danger to persons or property.

(v) Custodians may dispose of any property in accordance with applicable statutes or regulations relative to the disposition. The custodian may:

(A) Retain the property for official use;

(B) Donate the property to Federal, State, or local government facilities such as hospitals or to any nonprofit charitable organizations recognized as such under section

501(c)(3) of the Internal Revenue Code; or

(C) Request that GSA take custody of the property and remove it for disposition or sale.

(vi) Proceeds from the sale of forfeited property and any moneys forfeited shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, transportation costs, and any recording fees. Moneys remaining after payment of such expenses shall be deposited in the general fund of the United States Treasury.

(3) Notice requirements.

(i) The custodian shall make reasonable efforts to notify the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture except for the good cause exception if the owner cannot be notified.

(ii) The notice shall:

(A) Include a brief description of the property;

(B) Inform the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture of the opportunity to request an administrative review of the forfeiture;

(C) Inform the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture of the requirements for requesting administrative review of the forfeiture; and

(D) State the title and address of the official to whom a request for administrative review of the forfeiture may be addressed.

(iii) Except as provided in paragraphs (e)(3)(iv) and (v) of this section, notice shall be given within 45 days from the date the United States convicts, acquits, or declines to act against the person who exchanged the property.

(iv) Notice may be delayed if it is determined that such action is likely to endanger the safety of a law enforcement official or compromise another ongoing criminal investigation conducted by OIG, the United States Secret Service, the United States Postal Inspection Service, or other authorized Federal law enforcement agency.

(v) Notice need not be given to the general public.

(4) Administrative review.

(i) The actual or apparent owner(s) of or person(s) with possessory interests in the property shall have 30 days from the date of the delivery of the notice of forfeiture to make a request for an administrative review of the forfeiture.

(ii) The request shall be made in writing to the Assistant Inspector General for investigations, Office of Inspector General, USDA, or to his/her designee, hereinafter referred to as the reviewing official.

(iii) A request for an administrative review of the forfeiture of property shall include the following:

(A) A complete description of the property, including serial numbers, if any;

(B) Proof of the person's property interest in the property;

(C) The reason(s) the property should not be forfeited.

(iv) The requestor may, at the time of his/her written request for administrative review, also request an

oral hearing of the reasons the property should not be forfeited.

(v) The burden of proof will rest upon the requestor, who shall be required to demonstrate, by a preponderance of the evidence, that the property should not be forfeited.

(vi) Should the administrative determination be in their favor, the actual or apparent owner(s) of or person(s) with possessory interests in the property subject to forfeiture may request that forfeited items be returned or that compensation be made if the custodian has already disposed of the property.

(vii) The reviewing official shall not remit or mitigate a forfeiture unless the requestor:

(A) Establishes a valid, good faith property interest in the property as owner or otherwise; and

(B) Establishes that the requestor at no time had any knowledge or reason to believe that the property was being or would be used in violation of the law; and

(C) Establishes that the requestor at no time had any knowledge or reason to believe that the owner had any record or reputation for violating laws of the United States or of any State for related crimes.

(viii) The reviewing official may postpone any decision until the conclusion of any related administrative, civil, or criminal proceeding.

(ix) The decision of the reviewing official as to the disposition of the property shall be the final agency determination for purposes of judicial review.

271.6-272.1(a)

§271.6 Complaint procedure.

[Note: paragraph (a) is not relevant to stores and is intentionally omitted.]

(b) Regional office responsibility.

(1) Persons or agencies desiring program information or wishing to file a complaint may contact the appropriate FNS Regional Office.

(i) For Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, the Virgin Islands of the United States, and West Virginia: **Mid-Atlantic Regional Office**, U.S. Department of Agriculture, Food and Nutrition Service, Mercer Corporate Park, 300 Corporate Blvd., Robbinsville, N.J. 08691-1598.

(ii) For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: **Southeast Regional Office**, U.S. Department of Agriculture, Food and Nutrition Service, 66 Forsyth Street, SW., Room 8T36, Atlanta, GA. 30303-3415.

(iii) For Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: **Midwest Regional Office**, U.S. Department of Agriculture, Food and Nutrition Service, 77 West Jackson Blvd., 20th Floor, Chicago, Ill. 60604-3507.

(iv) For Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: **Southwest Regional Office**, U.S. Department of Agriculture, Food and Nutrition Service, 1100 Commerce Street, Room 5-A-6, Dallas, Tex. 75242-9980. For Alaska, Arizona, California, Hawaii, Idaho, Nevada, the Trust Territories, and American Samoa: **Western Regional Office**, U.S. Department of Agriculture, Food and Nutrition Service, 550 Kearny Street,

Room 400, San Francisco, Calif. 94108-2518.

(vi) For Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: **Northeast Regional Office**, U.S. Department of Agriculture, Food and Nutrition Service, 10 Causeway Street, Room 501, Boston, MA 02222-1069.

(vii) For Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: **Mountain Plains Regional Office**, U. S. Department of Agriculture, Food and Nutrition Service, 1244 Speer Blvd., Suite 903, Denver, CO. 80204-3581.

[Note: paragraph (b)(2) is not relevant to stores and is intentionally omitted.]

PART 272 -- REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

Sec.

272.1 General terms and conditions.

272.9 Approval of homeless meal providers.

§272.1 General terms and conditions.

(a) Coupons do not reduce benefits.

The coupon allotment provided any eligible household shall not be considered income or resources for any purpose under any Federal, State, or local laws including, but not limited to, laws on taxation, welfare, and public assistance programs. No participating State or political subdivision shall decrease any assistance otherwise provided an individual or individuals because of the receipt of a coupon allotment.

(b) No sales taxes on food stamp purchases.

(1) A State shall not participate in the Food Stamp Program if State or local sales taxes or other taxes or fees, including but not limited to excise taxes, are collected within the State on purchases made with food stamp coupons. "Purchases made with food coupons" for purposes of this provision shall refer to purchases of "eligible foods" as defined in §271.2. Where the total value of groceries being bought by the recipient is larger than the amount of coupons being presented by the recipient, only the portion of the sale made in exchange for food stamps must be exempt from taxation in order for a State to satisfy the requirements of this provision. Although a food stamp recipient may use a combination of cash and food stamps in making a food purchase, only the dollar amount represented by the food coupons needs to be exempt from taxation.

(2) State and/or local law shall not permit the imposition of tax on food paid for with coupons. FNS may terminate the issuance of coupons and disallow administrative funds otherwise payable pursuant to part 277 in any State where such taxes are charged. Action to disallow administrative funds shall be taken in accordance with the procedures set forth in §276.4.

(3) A State or local area which taxes some, but not all, eligible food items shall ensure that retail food stores in that locale sequence purchases of eligible foods paid for with a combination of coupons and cash so as to not directly or indirectly charge or assign a tax to food stamp recipients on eligible food items purchased with coupons. Prohibited methods include,

but are not limited to, the allocation of coupons first to non-taxable eligible items, and the application of cash, rather than coupons, to taxable eligible foods.

[Note: paragraphs (c)-(f) are not relevant to stores and are intentionally omitted.]

(g) Implementation [Electronic Benefit Transfer Systems].

The implementation schedule for any amendment to the regulations shall be specified in the amendment.

(162) *Amendment No. 384.* The provisions of Amendment No. 384 are effective September 14, 2000, and must be implemented as follows:

(i) Any new contract executed after October 16, 2000, must have provisions for interoperability and portability which include an implementation date for this functionality no later than October 1, 2002, except under the following circumstances:

(A) State agencies with contracts entered into before October 16, 2000, are not required to re-negotiate their EBT services contract to include interoperability and portability, even if the contract expires after the October 1, 2002 deadline; such State agencies are exempt from the interoperability requirement until they re-negotiate or re-procure their EBT contract.

(B) Smart Card systems are not required to be interoperable with other State EBT systems until such time that the Department determines a practicable technological method is available for interoperability with on-line EBT systems.

(ii) Enhanced funding is available for interoperability costs incurred after February 11, 2000, and before October 1, 2002, for State agencies which have implemented standards of

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interoperability and portability adopted by a majority of State agencies, and for such costs incurred after September 1, 2002, for State agencies that have adopted standards for interoperability and portability in accordance with this regulation at 7 CFR 274.12.

[Note: the remainder of §§272.1 and 272.3, through 272.8 are not relevant to stores and are intentionally omitted.]

§272.9 Approval of homeless meal providers.

The State food stamp agency, or another appropriate State or local governmental agency identified by the State food stamp agency, shall approve establishments serving the homeless upon sufficient evidence, as determined by the agency, that the establishment does in fact serve meals to homeless persons. Where the State food stamp agency identifies another appropriate State or local agency for the purpose of approving establishments serving the homeless, the State food stamp agency will remain responsible for insuring that the provisions of the preceding sentence are effectively carried out. The State food stamp agency, or another appropriate State or local governmental agency identified by the State food stamp agency or private nonprofit organization under contract with the State food stamp agency shall execute contracts with restaurants wishing to sell meals in exchange for food stamp benefits to homeless food stamp households. Such contracts shall specify that such meals are to be sold at "concessional" (low or reduced) prices and shall also specify the approximate prices which will be charged, or the amount and type of price reduction.

PART 274 ISSUANCE AND USE OF COUPONS

Sec.

274.12 Electronic Benefit Transfer Issuance System Approval Standards

§274.12 Electronic Benefit Transfer Issuance System Approval Standards

(a) General.

This section establishes rules for the approval, implementation and operation of on-line Electronic Benefit Transfer (EBT) systems for the Food Stamp Program as an alternative to issuing food stamp coupons. An on-line EBT system is a computer-based system in which the benefit authorization is received from a central computer through a point-of-sale (POS) terminal. Eligible households utilize magnetic-stripe plastic cards and have accounts maintained at the central computer in lieu of food stamp coupons to purchase food items at authorized food retailers. Once certified, the household's benefits are electronically loaded into a central computer account for each month during the certification period. Checkout lanes at authorized food retailers are to be equipped with POS terminals. When the transaction occurs, the POS terminals connect on-line to the central computer database; verify the validity of the Personal Identification Number (PIN), card number, and the amount of available benefits in an EBT account; obtain authorization for each purchase and initiate the debiting of the household's account and the crediting of the retailer's account.

[Note: paragraphs (b)-(e) are not relevant to stores and are intentionally omitted.]

(f) Functional Requirements.

The State agency shall ensure that the EBT system is capable of performing the following functional requirements prior to implementation:

(1) Authorizing Household Benefits.

(i) Issuing and replacing EBT cards to eligible households;

(ii) Permitting eligible households to select a personal identification number (PINs) at least four digits in length;

(iii) Establishing benefit cards and accounts with the central computer database;

(iv) Maintaining the master household issuance record file data and current authorization information;

(v) Training households and other users in system usage;

(vi) Authorizing benefit delivery;

(vii) Posting benefits to each household's account for regular and supplemental issuances;

(viii) Providing households with access to information on benefit availability;

(ix) Ensuring the privacy of household data and providing benefit and data security;

(x) Inventorying and securing accountable documents; and

(xi) Zeroing out benefit accounts and other account authorization activity.

(2) Providing Food Benefits to Households.

(i) Verifying the identity of authorized households or authorized household representatives at issuance terminals or POS;

(ii) Verifying the PIN and/or PIN offset, primary account number (PAN), terminal identification number and retailer identification number;

(iii) Determining the sufficiency of the household's account balance in order to debit or credit household benefit accounts at the point-of-sale;

(iv) Sending messages authorizing or rejecting purchases;

(v) Providing back-up purchase procedures when the system is unavailable;

(vi) Ensuring that benefits are available and carried over from month-to-month;

(vii) Converting EBT benefits to coupons in accordance with paragraph (f)(6) of this section; and

(viii) Responding to issuance problems in a timely manner.

(3) Crediting Retailers and Financial Institutions for Redeemed Benefits.

(i) Verifying electronic transactions flowing to or from participating retailers' bank accounts;

(ii) Creating and maintaining a file containing the individual records of EBT transactions;

(iii) Totaling all credits accumulated by each retailer;

(iv) Providing balance information to retailers or third party processors from individual POS terminals, as needed; Providing each retailer information on total deposits in the system on a daily basis;

(v) Preparing a daily tape in a National Automated Clearinghouse format or other process approved by FNS with information on benefits redeemed for each retailer and in summary;

(vii) Transmitting the automated clearinghouse (ACH) tape to a financial institution for transmission through the ACH or other method approved by FNS;

(viii) Transferring the information on the ACH tape or other process

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approved by FNS containing daily redemption activity of each retailer to the *FNS Minneapolis Computer Support Center* at least once weekly.

Transmittal may be by tape, disc, remote job entry or other means acceptable to FNS.

(4) Managing Retailer

Participation. The State agency shall:

(i) Convey retailer authorization information provided by FNS to the system operator using the Retailer Electronic Benefit Transfer (EBT) Data Exchange (REDE) system. The State agency must access the REDE files to ensure that the FNS retailer files used to authorize valid EBT Food Stamp transactions are updated on a daily basis. Follow-up on actions taken regarding any disqualification or withdrawal by an authorized food retailer from the Food Stamp Program must occur within two business days after receipt;

(ii) Add newly authorized food retail stores or third party processors to the EBT system as prescribed under paragraph (g)(1)(ii) of this section.

(iii) Ensure that only currently authorized retailers can access the system;

(iv) Monitor food retailers to ensure that equipment deployment complies with paragraph (g)(4) of this section;

(v) Ensure that equipment and supplies are maintained in working order for retail stores equipped by the State agency or its contractor. Equipment shall be replaced or repaired within 24 hours;

(vi) Ensure that retail store employees are trained in system operation prior to implementation. Such training shall include the provision of

appropriate written and program specific materials;

(vii) Provide a mechanism for compliance investigations which permits authorized investigators to have access to the system in order to conduct investigations of program abuse and alleged violations.

(g) Household Participation --

(1) Transaction Limits. No minimum dollar amount per transaction nor maximum limit on the number of transactions shall be established. In addition, no transaction fees shall be imposed on food stamp households utilizing the EBT system to access their benefits.

(2) Access to Balances. Households shall be permitted to determine their food stamp account balances without making a purchase or standing in a checkout line. The State agency shall ensure that the EBT system is capable of providing a transaction history for a period of up two calendar months to households upon request.

(3) Transaction Receipts. Households shall be provided printed receipts at the time of transaction. At a minimum this information shall:

(i) State the date, merchant's name and location, transaction type, transaction amount and remaining balance for the food stamp account;

(ii) Comply with the requirements of 12 CFR part 205 (Regulation E) in addition to the requirements of this section; and

(iii) Identify the food stamp household member's account number (the PAN) or a coded transaction number. The household's name shall not appear on the receipt except when a signature is required when utilizing a manual transaction voucher.

(4) Issuance of Benefits. State agencies shall establish an availability date for household access to their benefits and inform households of this date.

(i) The State agency may make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted.

(ii) A State agency shall make adjustments to an account to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error. A system error is defined as an error resulting from a malfunction at any point in the redemption process; from the system host computer, to the switch, to the third party processors, to a store's host computer or point of sale (POS) device. These adjustments may occur after the availability date and may result in either a debit or credit to the household.

(A) Client-initiated adjustments. The State agency must act on all requests for adjustments made by client households within 90 calendar days of the error transaction. The State agency has 10 business days from the date the household notifies it of the error to investigate and reach a decision on an adjustment and move funds into the client account. This timeframe also applies if the State agency or entity other than the household discovers a

system error that requires a credit adjustment to the household. Business days are defined as calendar days other than Saturdays, Sundays, and Federal holidays.

(B) Retailer-initiated adjustments. The State agency must act upon all adjustments to debit a household's account no later than 10 business days from the date the error occurred, by placing a hold on the adjustment balance in the household's account. If there are insufficient benefits to cover the entire adjustment, a hold shall be placed on any remaining balance that exists, with the difference being subject to availability only in the next future month. The household shall be given, at a minimum, adequate notice in accordance with Sec. 273.13 of this chapter. The notice must be sent at the time the initial hold is attempted on the household's current month's remaining balance, clearly state the full adjustment amount, and advise the household that any amount still owing is subject to collection from the household's next future month's benefits.

(1) The household shall have 90 days from the date of the notice to request a fair hearing.

(2) Should the household dispute the adjustment and request a hearing within 10 days of the notice, a provisional credit must be made to the household's account by releasing the hold on the adjustment balance within 48 hours of the request by the household, pending resolution of the fair hearing. If no request for a hearing is made within 10 days of the notice, the hold is released on the adjustment balance, and this amount is credited to the retailer's account. If there are insufficient funds available in the current month to cover the full adjustment

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amount, the hold may be maintained and settled at one time after the next month's benefits become available.

(iii) The appropriate management controls and procedures for accessing benefit accounts after the posting shall be instituted to ensure that no unauthorized adjustments are made in accordance with paragraph (f) (7) (iii) of this section.

(5) Issuance and Replacement of Cards or PINs.

(i) The State agency shall permit food stamp households to select their Personal Identification Number (PIN). PIN assignment procedures shall not be permitted.

(ii) The State agency shall replace EBT cards within two business days following notice by the household to the State agency. The State may request a waiver from the Department to allow a longer replacement time.

(iii) The State agency shall ensure that a duplicate account is not established which would permit households to access more than one account in the system.

(iv) An immediate hold shall be placed on accounts at the time notice is received from a household regarding the need for card or PIN replacement. The State agency shall implement a reporting system which is continually operative. Once a household reports that their EBT card has been lost or stolen, the State agency shall assume liability for benefits subsequently drawn from the account and replace any lost or stolen benefits to the household. The State agency or its agent shall maintain a record showing the date and time of all reports by households that their card is lost or stolen.

(v) The State agency may impose a replacement fee with the approval of

FNS. The fee shall not exceed the cost to replace the card. Any card replacement fee, the replacement threshold, frequency and circumstances to which the fee shall be applicable shall be identified when submitting the Advance Planning Document for FNS approval.

(6) Benefit Conversion.

(i) Households leaving an EBT State must be able to use their electronic benefits upon relocation. A State agency must convert these electronic benefits to paper coupons if a household is relocating to a State that is not interoperable and where electronic benefits are not portable from the households current State of residence.

[Note: remaining text under paragraph (g)(6-8) are not relevant to stores and are intentionally omitted.]

(9) Access to Retail Stores. The EBT system shall provide for minimal disruption of access to and service in retail stores by eligible households. The EBT system shall not result in a significant increase in the cost of food or cost of transportation to authorized food retail stores for food stamp households. Checkout lanes equipped with POS devices shall be made available to Food Stamp households during all retail store hours of operation.

(10) Household training.

(viii) Disclosure information regarding adjustments and a household's rights to notice, fair hearings, and provisional credits. The disclosure must also state where to call to dispute an adjustment and request a fair hearing. State agencies that have already implemented EBT shall have one year in which to grandfather adjustment disclosure into their training materials.

[Note: remaining text under paragraph (g) is not relevant to stores and is intentionally omitted.]

(h) Retailer Participation.

(1) All authorized retailers must be afforded the opportunity to participate in the EBT system. An authorized food retailer shall not be required to participate in an EBT system.

(i) Retailers who do not have immediate access to telephones at the time of purchase shall be accommodated by an alternative system (e.g., manual vouchers with preliminary or delayed telephone verification) for redeeming food sales to eligible food stamp customers. These retailers include stationary food stores which opt to make home deliveries to food stamp households, house-to-house trade routes which operate on standing orders from customers, e.g. milk and bread delivery routes, food buying cooperatives authorized to participate as well as other food retailers authorized under §278.1 of this chapter. Prior to delivery or upon returning to the store, the retailer shall telephone the EBT central computer or hotline number to log the transaction and obtain an authorization number. If authorization cannot be obtained before or at the time of purchase, the retailer assumes the

risk for sufficient benefits being available in the household's account. Any alternate method cannot be burdensome on either the household or the retailer, and it must include acceptable privacy and security features. Such systems shall only be available to retailers that cannot be equipped with a POS terminal at the time of sale.

(ii) Newly authorized retailers shall have access to the EBT system within two weeks after the receipt of the FNS authorization notice. However, whenever a retailer chooses to employ a third party processor to drive its terminals or elects to drive its own terminals, access to the system shall be accomplished within a 30 day period or a mutually agreed upon time to enable the third party interface specifications and any State required functional certification to be performed by the State agency and/or its contractor. The FNS field office shall notify each new retailer at the time of application for authorization that an EBT system is operating in their store location(s). The field office shall also notify the State agency in a timely manner when a retailer is authorized to participate in the Food Stamp Program.

(2) Authorized retailers shall not be required to pay costs essential to and directly attributable to EBT system operations as long as the equipment or services are provided by the State agency or its contractor and are utilized solely for the Food Stamp Program. In addition, if Food Stamp Program equipment is deployed under contract to the State agency, the State agency may, with USDA approval, share appropriate costs with retailers if the equipment is also utilized for commercial purposes.

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(3) The State agency shall ensure that a sufficient number of authorized food retailers have agreed to participate throughout the area in which the EBT system will operate to ensure that eligible food stamp households will not suffer a significant reduction in their choice of retail food stores and that a sufficient number of retail food stores serving minority language populations are participating.

(4) The EBT system shall be implemented and operated in a manner that maintains equal treatment for food stamp households in accordance with §278.2(b) of this chapter. The following requirements for the equal treatment of food stamp households shall directly apply to EBT systems:

(i) Retailers shall not establish special checkout lanes which are only for food stamp households or welfare customers. If special lanes are designated for the purpose of accepting other electronic debit or credit cards and/or other payment methods such as checks, food stamp customers with EBT cards may also be assigned to such lanes as long as other commercial customers are assigned there as well.

(ii) POS terminals shall be deployed as follows in EBT systems requiring food stamp households to participate:

(A) For an authorized food retail store with food stamp benefit redemption amounting to 15 percent or more of total food sales, all checkout lanes shall be equipped;

(B) For an authorized food retail store with Food Stamp benefit redemptions representing less than 15 percent of total food sales, supermarkets shall, at a minimum, receive one terminal for every \$11,000 in monthly redemption activity up to the

number of lanes per store. All other food retailers shall receive one terminal for every \$8,000 in monthly redemption activity up to the number of lanes per store. However, a State agency may utilize an alternative deployment formula that permits equipment deployment at higher levels than required by this paragraph up to the number of lanes in each store. The State agency shall review terminal deployment on a yearly basis and shall be authorized to remove excess terminals if actual redemption activity warrants a reduction.

(C) For newly authorized food retailers and authorized food retailers bordering the EBT system area, the State agency and food retailer shall negotiate a mutually agreed level of terminal deployment up to the number of lanes per store. The State agency may consult with the appropriate FNS field office in order to determine the previous food stamp redemption activity that could be utilized in determining the initial number of terminals to deploy in newly authorized retailers or border stores. The State agency shall examine household shopping patterns in the EBT operating area in order to establish the needs for border store equipment. The need to deploy equipment outside the State is limited to neighboring States that are not interoperable due to exemptions for technological barriers or temporary waivers. State agencies will also need to make accommodations for border stores in interoperable States that are deemed necessary for client access. To do so, State agencies must ensure that procedures are in place to process manual vouchers in instances when the system is down or for those retailers that do not have POS equipment. Redemption information shall remain confidential.

(D) Any food retailer shall be able to submit further evidence that it warrants additional terminals after the initial POS terminals are deployed. Food stamp households may also submit evidence to the State agency that additional POS terminals are needed.

(5) The State agency shall ensure that the EBT system provides credits to the financial institution holding the accounts for retailers or third party processors within two business days of the daily cut-over period for retailer settlement. The cut-over period is the time of day established by the system in which a transaction day is established for settlement and reconciliation.

(6) The State agency shall enter into an agreement with each authorized food retailer. The retailer agreement shall describe the terms and conditions of participation in the Food Stamp EBT system. At a minimum, the agreement shall:

(i) Describe all terms and conditions with respect to equipment ownership, lease arrangements, handling and maintenance for which the State agency and merchant are liable;

(ii) Describe the agreed upon procedures and policies for participation and withdrawal from the EBT system;

(iii) Comply with all Food Stamp Program regulations with respect to retailer participation in the program and treatment of Food Stamp Program households. This shall include specific requirements with respect to the deployment of terminals and the identification of checkout lanes for food stamp customers;

(iv) Delineate the liabilities during system downtime and the associated responsibilities of each party with respect to the use of off-line and/or

manually entered data, paper vouchers, and re-presented vouchers.

(i) Performance and Technical Standards.

The State agency shall ensure that EBT systems comply with Point of Sale (POS) technical standards established by the American National Standards Institute (ANSI) or International Organization for Standardization (ISO) where applicable. This includes the draft EBT ISO 8583 Processor Interface Technical Specifications contained in the ANSI standards, which delineates a standard message format for retailers and third parties. In addition, the State agency shall ensure that the EBT system meets performance and technical standards in the areas of system processing speeds, system availability and reliability, system security, system ease-of-use, minimum card and terminal requirements, performance bonding, and a minimum transaction set. With prior written approval from FNS, the State agency may utilize the prevailing industry performance standards in its region in lieu of those identified in this section. The standards shall be included in all requests for proposals and contracts.

(1) System Processing Speeds.

(i) For leased line systems, 98 percent of EBT transactions shall be processed within 10 seconds or less and all EBT transactions shall be processed within 15 seconds. Leased line systems rent telecommunications carriers specifically to connect to the central authorizing computer. For dial-up systems, 95 percent of the EBT transactions shall be processed within 15 seconds or less and all EBT transactions shall be processed within 20 seconds or less. Dial-up systems

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utilize existing telecommunications lines to dial up and connect to the central computer at the time of the transaction. Processing response time shall be measured at the POS terminal from the time the 'enter' or 'send' key is pressed to the receipt and display of authorization or disapproval information. Third party processors, as defined in paragraph (h)(5) of this section, shall be required by the State agency to comply with the same processing response times required of the primary processor.

(ii) The EBT system shall provide reports, as determined by the State agency, that document transaction processing response time and the number and type of problematic transactions that could not be processed within the standard response time.

(2) System Availability and Reliability.

(i) The EBT system central computer shall be available 99.9 percent of scheduled up-time, 24 hours a day, seven days per week. Scheduled up-time shall mean the time the database is available for transactions excluding scheduled downtime for routine maintenance. The total system, including the system's central computer, any network or intermediate processing facilities and cardholder authorization processors, shall be available 98 percent of scheduled up-time, 24 hours per day, 7 days per week. Scheduled downtime for routine maintenance shall occur during non-peak transaction periods. State certification procedures shall determine whether intermediate processing facilities and cardholder authorization processors are capable of complying with system availability standards prescribed herein prior to permitting the interface with the central computer system.

(ii) The system central computer shall permit no more than 2 inaccurate EBT transactions for every 10,000 EBT transactions processed. The transactions to be included in measuring system accuracy shall include all types of food stamp transactions permitted at POS terminals and processed through the host computer, manual transactions entered into the system, credits to household accounts, and funds transfers to retailer accounts.

(iii) Reconciliation reports and other information regarding problematic transactions shall be made available to the State agency by the system operator, individual retailers, households or financial institutions as appropriate. Reports on problematic transactions, including inaccurate transactions shall be delineated by the source of the problem such as card failure, POS terminal failure, interruption of telecommunications, or other component failure. Errors shall be resolved in a timely manner.

(3) System Security. As an addition to or component of the Security Program required of Automated Data Processing systems prescribed under §277.18(p) of this chapter, the State agency shall ensure that the following EBT security requirements are established:

(i) Storage and control measures to control blank unissued EBT cards and PINs, and unused or spare POS devices;

(ii) Measures to ensure communication access control. Communication controls shall include the transmission of transaction data and issuance information from point-of-sale terminals to work-stations and terminals at the data processing center. The following specific security measures

shall be included, as appropriate, in the system design documentation, operating procedures or the State agency Security Program:

(A) Computer hardware controls that ensure acceptance of data from authorized terminals only. These controls shall include the use of mechanisms such as retailer identification codes, terminal identifiers and user identification codes, and/or other mechanisms and procedures recognized by the industry;

(B) Software controls, placed at either the terminal or central computer or both, that establish separate control files containing lists of authorized retailers, terminal identifying codes, and user access and identification codes. EBT system software controls shall include separate checks against the control files in order to validate each transaction prior to authorization and limiting the number of unsuccessful PIN attempts that can be made utilizing standard industry practices before the card is deactivated;

(C) Communications network security that utilizes the Data Encryption Standard algorithm to encrypt the PIN, at a minimum, from the point of entry. Other security may include authentication codes and check-sum digits, in combination with data encoded on the magnetic stripe such as the PIN and/or PIN offset, to ensure data security during electronic transmission. Any of the network security measures may be utilized together or separately and may be applied at the terminal or central computer as indicated in the approved system design to ensure communications control;

(D) Manual procedures that provide for secure access to the system with minimal risk to household or retailer

accounts. Manual procedures may include the utilization of manager identification codes in obtaining telephonic authorization from the central computer system; requirements for separate entry with audio response unit verification and authorization number; and/or the utilization of 24 hour hotline telephone numbers to authorize transactions.

(iii) Message validation shall include but shall not be limited to:

(A) Message format checks for completeness of the message, correct order of data, existence of control characters, number and size of data fields and appropriate format standards as specified in the approved system design;

(B) Range checks for acceptable date fields, number and valid account numbers, purchase and refund upper limitations in order to prevent and control damage to the system accounts;

(C) Reversals of messages that are not fully processed and recorded.

(iv) Administrative and operational procedures shall ensure that:

(A) Functions affecting an account balance are separated or dually controlled during processing and when requesting Federal reimbursement through a concentrator bank under the provisions of paragraph (i) of this section. These functions may include but are not limited to the set up of accounts, transmittal of funds to and from accounts, access to files to change account records, and transmittal of retailer deposits to the ACH network or other means approved by FNS for crediting retailer bank accounts;

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(B) Passwords, identity codes or other security procedures must be utilized by State agency or local personnel and at data processing centers;

(C) Software programming changes shall be dual controlled to the extent possible;

(D) System operations functions shall be segregated from reconciliation duties;

(v) A separate EBT security component shall be incorporated into the State agency Security Program for Automated Data Processing (ADP) systems where appropriate and as prescribed under §277.18(p) of this chapter. The periodic risk analyses required by the Security Program shall address the following items specific to an EBT system:

(A) EBT system vulnerability to theft and unauthorized use;

(B) Completeness and timeliness of the reconciliation system;

(C) Vulnerability to tampering with or creating household accounts;

(D) Erroneous posting of issuances to household accounts;

(E) Manipulation of retailers' accounts such as creation of false transactions or intrusion by unauthorized computer users;

(F) Capability to monitor systematic abuses at POS terminals such as debits for a complete allotment, excessive manual issuances, and multiple manual transactions at the same time. Such monitoring may be accomplished through the use of exception reporting;

(G) Tampering with information on the ACH tape or similar information utilized in a crediting method approved by FNS; and,

(H) The availability of a complete audit trail. A complete audit trail shall, at a minimum, be able to provide a complete transaction history of each individual system activity that affects an account balance. The audit trail shall include the tracking of issuances from the Master File and Issuance File, network transactions from point-of-sale terminals to EBT central computer database and system file updates.

(vi) The State agency shall incorporate the contingency plan approved by FNS prior to pilot implementation and subsequently updated as part of the Expansion Implementation Plan into the Security Program.

(4) System Ease-of-Use.

(i) For all system users, the State agency shall ensure that the system:

(A) Minimizes the number of separate steps required to complete a transaction;

(B) Minimizes the number of codes or commands needed to make use of the system;

(C) Makes available clear and comprehensive account balance information with a minimum number of actions necessary;

(D) Provides training and instructions for all system users especially those persons with disabilities;

(E) Makes available prompts on POS terminals or balance only terminals, where appropriate;

(F) Identifies procedures for problem resolution;

(G) Provides reasonable accommodation for the needs of households with disabilities in keeping with the Americans with Disabilities Act of 1990.

(ii) In addition to the requirements of paragraph (h)(4)(i) of this section, the State agency shall ensure that retailers utilizing the EBT system:

(A) Have available manual backup procedures;

(B) Can obtain timely information on daily credits to their banks;

(C) Have available deposit information in a format readily comparable to information maintained in the store; and

(D) Have available instructions on resolving problems with equipment and retailer accounts.

(5) Third Party Processors. Third party processors are financial institutions, cardholder authorization processors other than the party with which the State agency has contracted for EBT services, and food retailers driving their own terminals that are capable of relaying electronic transactions to a central database computer for authorization. The State agency shall afford retailers the opportunity to use third party processors and shall provide interface specifications and certification standards in order for the third party processor to participate in the EBT system.

(i) In order to participate in a Food Stamp Program EBT system, a third party processor must be able to meet all third party interface specifications and certification standards associated with this section. The State agency shall publish the third party interface specifications prior to implementation of the EBT system to enable third party processors to access the database. Third party processors shall undergo functional and acceptance tests as specified by the State agency;

(ii) Third party processors shall be liable for transactions until the transaction has been electronically accepted by the contracted vendor or an intermediate processing facility;

(iii) The State agency shall ensure that third party processors and food retailers driving their own terminals comply with this section and all applicable Food Stamp Program regulations.

(6) Minimum Card Requirements.

(i) The State agency shall ensure that the following information is printed on the card:

(A) The address of the office where a card can be returned if found or no longer in use;

(B) The statement of nondiscrimination which reads as follows: "This is an equal opportunity program. If you believe that you have been the victim of discrimination in your efforts to receive food stamp benefits because of your race, color, national origin, age, sex, disability, religious belief, or political beliefs, write immediately to the Administrator, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302." In lieu of printing the required information on the EBT card, the State agency shall provide each household a card jacket or sleeve containing the nondiscrimination statement.

(ii) FNS reserves the right to require State agencies to place a Department logo on the EBT card and/or sleeves or jackets.

(iii) EBT cards and/or sleeves or jackets shall not contain the name of any State or local official. EBT informational materials shall not indicate association with any political party or other political affiliation.

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(7) POS-Terminals. POS terminals shall meet the following requirements:

(i) Balance information shall not be displayed on the screen of the POS terminal except for balance-only inquiry terminals;

(ii) PINs shall not be displayed at the terminal; and

(iii) PIN encryption shall occur from the point of entry in a manner which prevents the unsecured transmission between any point in the system.

(8) Performance Bonding. The State agency may require a performance bond in accordance with §277.8 of this chapter or utilize other contractual clauses it deems necessary to enforce the requirements of this section.

(9) Minimum Transaction Set. At a minimum, the State agency shall ensure that the EBT system, including third party processors and retailers driving their own terminals, is capable of providing for authorizing or rejecting purchases, refunds or customer credits, voids or cancellations, key entered transactions, balance inquiries and settlement or close-out transactions. The system must be capable of completing this transaction set across State borders nationwide in accordance with standards specified in paragraph (i) (10) of this section.

(10) Interoperability. State agencies must adopt uniform standards to facilitate interoperability and portability nationwide. The term “interoperability” means the EBT system must enable a coupon issued in the form of an EBT card to be redeemed in any State. The term “portability” means the EBT system must enable a coupon issued in the form of an EBT card to be

used in any State by a household to purchase food at a retail food store or a wholesale food concern approved under the Food Stamp Act of 1977. The standards must include the following:

(i) EBT System Connectivity. State agencies are responsible for establishing telecommunications links, transaction switching facilities and any other arrangements with other State agencies necessary for the routing of interoperable transactions to such other State EBT authorization systems. State agencies are also responsible for facilitating the settlement of such interoperable transactions and the handling of adjustments. These connections need not be direct connections between State authorization systems but may be facilitated through agreements and linkages with other designated agents or third party processors. All State agencies must agree to the timing and disposition of disputes, error resolution, and adjustments in accordance with Department regulations at §§273.13 (a), 273.15(k) and paragraph (f) of this chapter. State agencies or their designated agents must draw funds from State food stamp accounts for food stamp benefits transacted by that State’s food stamp recipients, regardless of where benefits were transacted.

(ii) Message Format. Each authorization system must use the International Organization for Standards (ISO) 8583 message format, modified for EBT, in a version mutually agreed to between the authorization agent and the party connected for all transactions. Each authorization system must process each financial transaction as a single message financial transaction, except for pre-authorized transactions and

reversals, processed as paired transactions.

(iii) Card Primary Account Number (PAN) Requirements. Track 2 on each card shall contain the PAN. Each Government entity must obtain an Issuer Identification Number (IIN) from the American Banker's Association (ABA). The IIN should be included as the first six digits of the Primary Account Number. The PAN must comply with International Organization for Standards (ISO) 7812, Identification Cards--Numbering System and Registration Procedures for Issuer Identifiers. Each State agency must be responsible for generating, updating, and distributing IIN files of all States to each retailer, processor, or acquirer that is directly connected to the State's authorization system. Each terminal operator that uses a routing table for routing acquired transactions must, within seven calendar days of receiving an IIN routing table update, modify its routing tables to reflect the updated routing information.

(iv) Third Party Processor Requirements. Each Third Party Processor or terminal operator must have primary responsibility and liability for operating the telecommunications and processing system (including software and hardware) through which transactions initiated at POS terminals it owns, operates, controls or for which it has signed an agreement to accept EBT transactions, are processed and routed, directly or indirectly, to the appropriate State authorization system. Each terminal operator must maintain the necessary computer hardware and software to interface either directly with a State authorization system or with a third party service provider to obtain access to one or more State authorization systems. Each terminal

operator must establish a direct or indirect telecommunications connection for the routing of transactions to the State authorization system or to a processor directly or indirectly connected to the State authorization system.

(v) REDE File. The State agency must ensure that their EBT system verifies FNS retailer numbers for all interstate transactions against the National REDE file of all FNS EBT retailers to validate these transactions.

(11) Waivers. The State agency may request a waiver from the Department for a temporary exemption from compliance with the requirements for interoperability and portability, as found in this section, if they can adequately demonstrate that: (1) There are unusual technological barriers to the implementation of interoperability; and (2) it is in the best interest of the FSP to grant the waiver. All waivers must specify a date by which the State agency will achieve interoperability and portability.

(j) Concentrator Bank Responsibilities.

The concentrator bank shall be a Federally insured financial institution or other entity acceptable to the Federal Reserve which has the capability to take retailer credits and/or debits, obtained from the EBT system operator, and transmit them to the ACH network operated by the Federal Reserve or through another process for crediting retailers approved by FNS. Transmittal shall be by tape or on-line in a format suitable for the Automated Clearinghouse (ACH) or as approved by FNS.

(1) The minimum functions of the concentrator bank are:

274.12(j)(1)(i)–(k)(6)(iii)

(i) Preparing a daily ACH tape or other crediting process approved by FNS with information on benefits redeemed and creditable to each retailer;

(ii) Transferring the ACH tape or other crediting process approved by FNS to the Federal Reserve or other entity approved by FNS;

(iii) Initiating and accepting reimbursement from the appropriate U.S. Treasury account via the Payment Management System of the U.S. Department of Health and Human Services (HHS) or other payment process approved by FNS. At the option of FNS, the State agency may designate another entity as the initiator of reimbursement for food stamp redemptions provided the entity is acceptable to FNS and HHS;

(iv) Cooperating in the reconciliation of discrepancies and error resolution when necessary.

(2) With the approval of FNS, another procedure, other than the ACH system, may be utilized to credit retailer accounts and/or debit FNS' account, if it meets the needs of FNS and the EBT system.

(3) The State agency shall be liable for any errors in the creation of the ACH tape or its transmission. The State agency may transfer the liability associated with creation of the ACH tape, its transmission or another crediting process approved by FNS as appropriate to the EBT system operator or the concentrator bank. Appropriate system security administrative and operational procedures shall be instituted in accordance with paragraph (h)(3) of this section.

(k) Reconciliation, management reporting, examinations and audits.

[Note: paragraphs (k)(1-5) are not relevant to stores and are intentionally omitted.]

(6) State agencies may receive one hundred percent federal funding for the costs they incur for switching and settling all food stamp interstate transactions. For purposes of this section, the term “switching” means the routing of an interstate transaction that consists of transmitting the details of a transaction electronically recorded through the use of an EBT card in one State to the issuer of the card that is in another State; and the term “settling” means movement, and reporting such movement, of funds from an EBT card issuer located in one to a retail food store, or wholesale food concern, that is located in another State, to accomplish an interstate transaction. The total amount of one hundred percent funding available annually is limited to \$500,000 nationwide. Once the \$500,000 limitation is exceeded, federal financial participation reverts to the standard fifty percent program reimbursement rate and procedure. In order to qualify for this funding, the State agency must:

(i) Adhere to the standard of interoperability and portability adopted by a majority of State agencies for interoperability costs incurred for the period from February 11, 2000 through September 30, 2002;

(ii) Meet standards of interoperability and portability under subsections (e) and (h) for costs incurred after September 30, 2002;

(iii) Sign and submit, in each fiscal year for which a State agency requests enhanced funding, an Interoperability Funding Agreement to comply with the administrative procedures established by the Department. The State agency must submit the signed agreement to the Department before the end of the

fiscal year in which costs are incurred in order to qualify for payment for that fiscal year; and

(iv) Submit requests for payment on a quarterly basis after the end of the quarter in which interoperability costs are incurred, in accordance with the Department's administrative procedures. Requests for payments shall be due February 15 (for the period October through December), May 15 (January through March), August 15 (April through June), and November 15 (July through September). Requests for payment submitted after the required date for a quarter shall not be considered until the following quarter, when such requests for payments are scheduled to be processed.

[Note: paragraph (l) is not relevant to stores and is intentionally omitted.]

(m) Re-presentation.

The State agency shall ensure that a manual purchase system is available for use during times when the EBT system is inaccessible.

(1) Under certain circumstances, when a manual transaction occurs due to the inaccessibility of the host computer and the transaction is rejected because insufficient funds are available in a household's account, the State agency may permit the re-presentation of the transaction during subsequent months. At the State agency's option, re-presentation may be permitted within the EBT system as follows:

(i) Re-presentation of manual vouchers when there are insufficient funds in the EBT account to cover the manual transaction may be permitted only under the following circumstances:

(A) The manual transaction occurred because the host computer was down and authorization was

obtained by the retailer for the transaction; or

(B) The manual transaction occurred because telephone lines were down.

(ii) Re-presentation of manual vouchers shall not be permitted when the EBT card, magnetic stripe, PIN pads, card reader, or POS terminal fails and telephone lines are operational. Manual transactions shall not be utilized to extend credit to a household via re-presentation when the household's account balance is insufficient to cover the planned purchase.

(iii) The State agency may debit the benefit allotment of a household during the first month following the insufficient funds transaction in the amount of \$50. If the monthly allotment is less than \$50, the State shall debit the account for \$10. For each subsequent month, the deduction from the monthly allotment shall be the greater of \$10 or 10 percent until the re-presentation is completely repaid.

(2) The State agency shall establish procedures for determining the validity of each re-presentation and subsequent procedures authorizing a debit from a household's monthly benefit allotment. The State agency may ask households to voluntarily pay the amount of a re-presented transaction or arrange for a faster schedule of payment than identified in paragraph (m)(1)(iii) of this section.

(3) The State agency shall ensure that retailers provide notice to households at the time of the manual transaction that re-presentation may occur if there are insufficient benefits in the account to cover the transaction. The statement shall be printed on the paper voucher or on a separate sheet of paper. The State agency shall also

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provide notice to the household prior to the month when a benefit allotment is reduced when a re-presentation is necessary. Notice shall be provided to the household for each insufficient transaction that is to be re-presented in a future month. The notice shall be provided prior to the month it occurs and shall state the amount of the reduction in the benefit allotment.

(4) The Department shall not accept liability under any circumstances for the over issuance of benefits due to the utilization of manual vouchers, including those situations when the host computer is inaccessible or telecommunications lines are not functioning. However, the State agency, in consultation with authorized retailers and with the mutual agreement of the State agency's vendor, if any, may accept liability for manual purchases within a specified dollar limit. Costs associated with liabilities accepted by the State agency shall not be reimbursable.

(5) The State agency shall be strictly liable for manual transactions that result in excess deductions from a household's account.

[Note: paragraph (n) intentionally omitted as not relevant to store eligibility.]

PART 278--PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

Sec.

- 278.1 Approval of retail food stores and wholesale food concerns.
- 278.2 Participation of retail food stores.
- 278.3 Participation of wholesale food concerns.
- 278.4 Procedure for redeeming coupons.
- 278.5 Participation of insured financial institutions.

- 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.
- 278.7 Determination and disposition of claims--retail food stores and wholesale food concerns.
- 278.8 Administrative review -- retail food stores and wholesale food concerns.
- 278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns and insured financial institutions.
- 278.10 [Reserved]

§278.1 Approval of retail food stores and wholesale food concerns.

(a) Application.

Any firm desiring to participate or continue to be authorized in the program shall file an application as prescribed by FNS. Such an application shall contain information which will permit a determination to be made as to whether such an applicant qualifies, or continues to qualify, for authorization under the provisions of the program. FNS may require that a retail food store or wholesale food concern be visited to confirm eligibility for program participation prior to such store or concern being authorized or reauthorized in the program. Required visits shall be conducted by an authorized employee of the Department, a designee of the Secretary, or an official of the State or local government designated by the Secretary. FNS shall approve or deny the application within 45 days of receipt of a completed application. A completed application means that all information (other than an on-site visit) that FNS deems necessary in order to make a

determination on the firm's application has been received. This information includes, but is not limited to, a completed application form, all information and documentation from the applicant, as well as any needed third-party verification and documentation.

(b) Determination of authorization.

An applicant shall provide sufficient data and information on the nature and scope of the firm's business for FNS to determine whether the applicant's participation will further the purposes of the program. Upon request, an applicant shall provide documentation to FNS to verify information on the application. Such information may include, but is not limited to, State and local business licenses, Social Security cards, drivers' licenses, photographic identification cards, bills of sale, deeds, leases, sales contracts, State certificates of incorporation, sales records, invoice records and business-related tax records. Retail food stores and wholesale food concerns and other entities eligible for authorization also shall be required to sign a release form which will authorize FNS to verify all relevant business related tax filings with appropriate agencies. In addition, they must obtain corroborating documentation from other sources as deemed necessary to ensure the legitimacy of applicant firms, as well as the accuracy of information provided by the stores and concerns. Failure to comply with any request for information or failure to sign a written release form shall result in denial of the application for authorization or withdrawal of a firm or concern from the program. In determining whether a firm qualifies for

authorization, FNS shall consider all of the following:

(1) The nature and extent of the food business conducted by the applicant.

(i) Retail food store.

(A) An establishment or house-to-house trade route shall normally be considered to have food business of a nature and extent that will effectuate the purposes of the program if it sells food for home preparation and consumption and meets one of the following criteria: Offer for sale, on a continuous basis, a variety of qualifying foods in each of the four categories of staple foods as defined in §271.2 of this chapter, including perishable foods in at least two of the categories (Criterion A); or have more than 50 percent of the total gross retail sales of the establishment or route in staple foods (Criterion B).

(B) A retail food store must meet eligibility determination factors that may be based on, but not limited to, visual inspection, sales records, purchase records, counting of stock keeping units, or other inventory or accounting record keeping methods that are customary or reasonable in the retail food industry. In determining eligibility, such information may be requested for verification purposes, and failure to provide such documentation may result in denial or withdrawal from the program.

(ii) Application of Criterion A. In order to qualify under this criterion, firms shall:

(A) Offer for sale and normally display in a public area, qualifying staple food items on a continuous basis, evidenced by having, on any given day of operation, no fewer than three different varieties of food items in each of the four staple food categories. Documentation to determine if a firm

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stocks a sufficient amount of required staple foods to offer them for sale on a continuous basis may be required in cases where it is not clear that the requirement has been met. Such documentation can be achieved through store visits and/or verifying information when requested. Failure to provide verifying information when requested or to cooperate with store visits shall result in the denial or withdrawal of authorization.

(B) Offer for sale perishable staple food items in at least two staple food categories. Perishable foods are items which are either frozen staple food items or fresh, unrefrigerated or refrigerated staple food items that will spoil or suffer significant deterioration in quality within 2-3 weeks; and

(C) Offer a variety of staple foods, which means different types of foods, such as apples, cabbage, tomatoes, and squash in the fruit or vegetable staple food category, or milk, cheese, butter, and yogurt in the dairy category. Variety of foods is not to be interpreted as different brands, different nutrient values, different varieties of packaging, or different package sizes. Similar processed food items with varying ingredients such as, but not limited to, sausages, breakfast cereals, milk, sliced breads, and cheeses, and similar unprocessed food items, such as, but not limited to, different varieties of apples, cabbage, tomatoes, or squash shall not each be considered as more than one staple food variety for the purpose of determining variety. Multiple ingredient food items intended for home preparation and consumption, such as, but not limited to, cold pizza, macaroni and cheese, soup, or frozen dinners, shall only be counted as one staple food variety each and will normally be

included in the staple food category of the main ingredient as determined by the FNS.

(iii) *Application of Criterion B.* In order to qualify under this criterion, firms must have more than 50 percent of their total gross retail sales in staple food sales. Total gross retail sales must include all retail sales of a firm, including food and non-food merchandise, as well as services, such as rental fees, professional fees, and entertainment/sports/ games income. However, a fee directly connected to the processing of staple foods, such as raw meat, poultry, or fish by the service provider, may be calculated as staple food sales under Criterion B.

(iv) *Ineligible firms.* Firms that do not meet the eligibility requirements in this section or that do not effectuate the purpose of the Food Stamp Program shall not be eligible for program participation. New applicant firms that are found to be ineligible will be denied authorization to participate in the program, and authorized retail food stores found to be ineligible will be withdrawn from program participation. Ineligible firms under this paragraph include, but are not limited to, stores selling only accessory foods, including spices, candy, soft drinks, tea, or coffee; ice cream vendors selling solely ice cream; and specialty doughnut shops or bakeries not selling bread. In addition, firms that are considered to be restaurants, that is, firms that have more than 50 percent of their total gross retail sales in hot and/cold prepared foods not intended for home preparation and consumption, shall not qualify for participation as retail food stores under Criterion A or B. This includes firms that primarily sell prepared foods that are

consumed on the premises or sold for carryout. Such firms may qualify, however, under the special restaurant programs that serve the elderly, disabled, and homeless populations, as set forth in paragraph (d) of this section.

(v) Wholesale food concerns.

Wholesale food concerns. The primary business of which is the sale of eligible food at wholesale, and which meet the staple food requirements in paragraph (b) of this section, shall normally be considered to have adequate food business for the purposes of the program, provided such concerns meet the criteria specified in paragraph (c) of this section.

(vi) Co-located wholesale food concerns. No co-located wholesale/retail food concern with 50 percent or less of its total sales in retail food sales may be authorized to redeem food stamps unless it meets the criteria applicable to all retail firms and:

(A) It is a legitimate retail food outlet. Indicators which may establish to FNS that a firm is a legitimate retail food outlet include, but are not limited to, the following:

(1) The firm's marketing structure; as may be determined by factors such as, but not limited to:

(i) A retail business license;
(ii) The existence of sales tax records documenting retail food sales; and/or separate bookkeeping records; and

(2) The way the firm holds itself out to the public as evidenced by factors such as, but not limited to:

(i) The layout of the retail sales space;
(ii) The use of retail advertisements;
(iii) The posting of retail prices;
(iv) Offering specials to attract retail customers;

(v) Hours of operation for retail business;

(vi) Parking area for retail customers; and

(B) It has total annual retail food sales of at least \$250,000; or

(C) It is a legitimate retail outlet but fails to meet the requirements in paragraph (b)(1)(iv)(B) of this section, and not authorizing such a firm would cause hardship to food stamp households. Hardship would occur in any one of the following circumstances:

(1) Program recipients would have difficulty in finding authorized firms to accept their coupons for eligible food;

(2) Special ethnic foods would not otherwise be available to recipients; or

(3) Recipients would be deprived of an opportunity to take advantage of unusually low prices offered by the firm if no other authorized firm in the area offers the same types of food items at comparable prices.

(2) The volume of coupon business which FNS may reasonably expect the firm to do. The FNS officer in charge may consider such factors as the location of a store and previous food sales volumes in evaluating the ability of an applicant firm to attract food stamp business.

(3) The business integrity and reputation of the applicant. FNS shall deny the authorization of any firm from participation in the program for a period of time as specified in paragraph (k) of this section based on consideration of information regarding the business integrity and reputation of the firm as follows:

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(i) Conviction of or civil judgment against the owners, officers or managers of the firm for:

(A) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(C) Violation of Federal, State and/or local consumer protection laws or other laws relating to alcohol, tobacco, firearms, controlled substances, and/or gaming licenses;

(ii) Administrative findings by Federal, State or local officials that do not give rise to a conviction or civil judgment but for which a firm is removed from such a program, or the firm is not removed from the program but FNS determines a pattern exists (3 or more instances) evidencing a lack of business integrity on the part of the owners, officers or managers of the firm;

(iii) Evidence of an attempt by the firm to circumvent a period of disqualification, a civil money penalty or fine imposed for violations of the Food Stamp Act and program regulations;

(iv) Previous Food Stamp Program violations administratively and/or judicially established as having been committed by owners, officers, or managers of the firm for which a sanction had not been previously imposed and satisfied;

(v) Evidence of prior Food Stamp Program violations personally committed by the owner(s) or the officer(s) of the firm at one or more units of a multi-unit firm, or evidence of prior

Food Stamp Program violations committed by management at other units of multi-unit firms which would indicate a lack of business integrity on the part of the ownership and for which sanctions had not been previously imposed and satisfied, or

(vi) Commission of any other offense indicating a lack of business integrity or business honesty of owners, officers or managers of the firm that seriously and directly affects the present responsibility of a person.

(4) Bonding for firms with previous sanctions.

(i) If the applicant firm has been sanctioned for violations of this part, by withdrawal or disqualification from program participation, or by a civil money penalty, the FNS officer-in-charge shall, as a condition of future authorization, require the applicant to present a collateral bond which:

(A) Is issued by a bonding agent recognized under the law of the State in which the applicant is conducting business, and which is represented by a negotiable certificate only.

(B) Is payable to the Food and Nutrition Service, U.S. Department of Agriculture;

(C) Cannot be canceled by the bonding agent for non-payment of the premium by the applicant;

(D) Has a face value of \$1,000 or an amount equal to ten percent of the average monthly coupon redemption volume of the applicant for the immediate twelve months prior to the effective date of the most recent sanction which necessitated the bond, whichever amount is greater;

(E) Is valid at all times during which the firm is authorized to participate in the program; and

(F) Remains in the custody of the officer-in-charge unless released to the applicant as a result of the withdrawal of the applicant's authorization, without a fiscal claim established against the applicant by FNS.

(ii) Furnishing a collateral bond shall not eliminate or reduce a firm's obligation to pay in full any civil money penalty or previously determined fiscal claim which may have been assessed against the firm by FNS prior to the time the bond was required by FNS, and furnished by the firm. A firm which has been assessed a civil money penalty shall pay FNS as required, any subsequent fiscal claim asserted by FNS. In such cases a collateral bond shall be furnished to FNS with the payment, or a schedule of intended payments, of the civil money penalty. A buyer or transferee shall not, as a result of the transfer or purchase of a disqualified firm, be required to furnish a bond prior to authorization.

(5) Taxpayer identification numbers. At the time of an initial request for authorization as well as reauthorization, an applicant firm must provide its employer identification number and social security numbers as described below:

(i) Employer Identification Number. The firm must provide its employer identification number (EIN) if one has been assigned to the firm by the Internal Revenue Service. The authority to request EINs and the guidelines for requesting EINs are set forth in section 6109(f) of the Internal Revenue Code of 1986 and Treas. Reg. §301.6109-2 (26 CFR 301.6109-2).

(ii) Social Security Number. In addition to the EIN, the firm must provide the social security numbers (SSNs) of the following individuals:

(A) The SSN of an owner of a sole proprietorship.

(B) The SSNs of general partners of firms which are partnerships.

(C) The SSNs of up to five of the largest shareholders (owners) of privately owned corporations. (For purposes of this section, a privately owned corporation is one which has shares or stock that are not traded on a stock exchange or available for purchase by the general public.)

(6) Other factors. Any other factors which the FNS officer in charge considers pertinent to the application under consideration.

(c) *Wholesalers.*

A wholesale food concern may be authorized to accept coupons only from a specified customer or customers if it meets the requirements of paragraphs (a) and (b) of this section, and FNS determines it is required as a redemption outlet:

(1) For one or more specified authorized drug addict or alcoholic treatment programs,

(2) For one or more specified authorized group living arrangements,

(3) For one or more specified authorized shelters for battered women and children,

(4) For one or more specified authorized nonprofit cooperative food-purchasing ventures,

(5) For one or more specified authorized public or private nonprofit homeless meal providers, or

(6) For one or more specified authorized retail food stores which are without access to an insured financial institution which will redeem their coupons. No firm may be authorized to accept and redeem coupons concurrently as both a retail food store

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and a wholesale food concern. Authorizations of wholesale food concerns granted prior to January 28, 1982 shall expire on May 31, 1982. Wholesale food concerns desiring to participate in the program after that date must reapply for authorization in accordance with the provisions of this paragraph.

(d) Meal services.

A meal delivery service or communal dining facility desiring to prepare and serve meals to households eligible to use coupons for those meals in addition to meeting the requirements of paragraphs (a) and (b) of this section, must establish that:

(1) It is recognized as a tax exempt organization by the Internal Revenue Service; or

(2) It is a senior citizens' center or apartment building occupied primarily by elderly persons and SSI recipients, and their spouses; or

(3) It is a restaurant operating under a contract with a State or local agency to prepare and serve (or deliver) low-cost meals to homeless persons, elderly persons and SSI recipients (and in the case of meal delivery services, to elderly persons or handicapped persons) and their spouses. Such a facility must have more than 50 percent of its total sales in food. The contracts of restaurants must specify the approximate prices which will be charged.

(e) Treatment programs.

Drug addict or alcoholic treatment and rehabilitation programs wishing to redeem through wholesalers food stamps received from or on behalf of their participants shall in addition to meeting the requirements of paragraphs

(a), (b) and (d)(1) of this section, be under Part B of Title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). Approval to participate is automatically withdrawn once the treatment and rehabilitation program no longer meets the criteria which would make it eligible for funding under Part B of Title XIX (in accordance with the definition in "Drug addiction or alcoholic treatment and rehabilitation program" in §271.2).

(f) Group living arrangements.

FNS shall authorize as retail food stores those group living arrangements wishing to redeem coupons directly through wholesalers. The group living arrangement must, in addition to meeting requirements of paragraphs (a), (b), and (d)(1) of this section, be certified by the appropriate agency or agencies of the State under regulations issued under section 1616(e) of the Social Security Act or under standards determined by the Secretary to be comparable to standards implemented by appropriate State agencies under section 1616(e) of the Social Security Act. Approval to participate is automatically cancelled at any time that a program loses its certification from the State agency or agencies.

(g) Shelters for battered women and children.

FNS shall authorize as retail food stores those shelters for battered women and children wishing to redeem coupons directly through wholesalers. The shelter must be public or private nonprofit, as defined in paragraph (d)(1) of this section, and meet the requirements of paragraphs (a) and (b) of this section. Shelters which also serve other groups of individuals must

have a portion of the facility set aside on a long-term basis to shelter battered women and children. Also required is that the shelter be a residence which serves meals or provides food to its residents.

(h) House-to-house trade routes.

FNS shall, in consultation with the Department's Office of Inspector General, determine those locations where the operation of trade routes damages the program's integrity. FNS may limit the authorization of house-to-house trade routes to those trade routes whose services are required by participating households in such areas in order to obtain food. The FNS Officer in Charge, in deciding whether households in such areas require a trade route's services, shall consider the volume of food business the trade route does and the availability of alternate sources of comparable food. An FNS official shall inspect any applicant trade route's vehicle to ensure that the trade route is a retail food store before authorizing it to accept coupons. An FNS official may require, as a condition of continuing authorization, that the trade route vehicle be reinspected semiannually to ensure that it continues to be a retail food store.

(i) Private homeless meal providers.

FNS may authorize as retail food stores those restaurants which contract with the appropriate State agency to serve meals to homeless persons at "concessional" (low or reduced) prices. Restaurants shall be responsible for obtaining contracts with the appropriate State agency as defined in §272.9 and for providing a copy of the contract to FNS at the time it applies for authorization to accept food stamp

benefits. Contracts must specify the approximate prices which will be charged. Examples of reduced prices include, but are not limited to, a percentage reduction, a set dollar amount reduction, a daily special meal, or an offer of a free food items or beverage (excluding alcoholic beverages.)

(j) Authorization.

Upon approval, FNS shall issue a nontransferable authorization card to the firm. The authorization card shall be valid only for the time period for which the firm is authorized to accept and redeem food stamp benefits. The authorization card shall be retained by the firm until such time as the authorization period has ended, authorization in the program is superseded, or the card is surrendered or revoked as provided in this part. All firms will be authorized in the program for a period of 5 years. The specification of an authorization period in no way precludes FNS from periodically requesting information from a firm for purposes of reauthorization in the program or from withdrawing or terminating the authorization of a firm in accordance with this part.

(k) Denying authorization.

FNS shall deny the application of any firm if it determines that:

(1) The firm does not qualify for participation in the program as specified in paragraphs (b), (c), (d), (e), (f), (g), (h) or (i) of this section; or

(2) The firm has failed to meet the eligibility requirements for authorization under Criterion A or Criterion B, as specified in paragraph (b)(1)(i) of this section; or, for co-located wholesale/retail firms, the

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firm fails to meet the requirements of paragraph (b)(1)(vi) of this section. Any firm that has been denied authorization on these bases shall not be eligible to submit a new application for authorization in the program for a minimum period of six months from the effective date of the denial.

(3) The firm has been found to lack the necessary business integrity and reputation to further the purposes of the program. Such firms shall be denied authorization in the program for the following period of time:

(i) Firms for which records of criminal conviction or civil judgment exist that reflect on the business integrity of owners, officers, or managers as stipulated in §278.1(b)(3)(i) shall be denied authorization permanently;

(ii) Firms which have been officially removed from other Federal, State or local government programs through administrative action shall be denied for a period equivalent to the period of removal from any such programs; or, if the firm is not removed from the program, but FNS determines a pattern (3 or more instances) exists evidencing a lack of business integrity on the part of the owners, officers or managers of the firm, such firm shall be denied for a one-year period effective from the date of denial;

(iii) Firms for which evidence exists of an attempt to circumvent a period of disqualification, a civil money penalty, or fine imposed for violations of the Food Stamp Act of 1977, as amended, and program regulations shall be denied for a period of three years from the effective date of denial;

(iv) Firms for which evidence exists of prior Food Stamp Program violations by owners, officers, or

managers of the firm for which a sanction had not been previously imposed and satisfied shall be denied for a period of time equivalent to the appropriate disqualification period for such previous violations, effective from the date of denial;

(v) Firms for which evidence exists of prior Food Stamp Program violations at other units of multi-unit firms as specified in §278.1(b)(3)(v) for which a sanction had not been previously imposed and satisfied shall be denied for a period of time equivalent to the appropriate disqualification period for such previous violations, effective from the date of denial;

(vi) Firms for which any other evidence exists which reflects negatively on the business integrity or business honesty of the owners, officers or managers of the firm as specified in §278.1(b)(3)(vi) shall be denied for a period of one year from the effective date of denial;

(4) The firm has filed an application that contains false or misleading information about a substantive matter, as specified in §278.6(e). Such firms shall be denied authorization for the periods specified in §§278.6(e)(1) or 278.6(e)(3);

(5) The firm's participation in the program will not further the purposes of the program;

(6) The firm has been found to be circumventing a period of disqualification or a civil money penalty through a purported transfer of ownership;

(7) The firm has failed to pay in full any fiscal claim assessed against the firm under §278.7, any fines assessed under §§278.6(ℓ) or 278.6(m), or a transfer of ownership civil money penalty assessed under §278.6(f). The

FNS officer in charge shall issue a notice to the firm by certified mail or personal service of any firm that it may request review of that determination.

(ℓ) Withdrawing authorization.

(1) FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons:

(i) The firm's continued participation in the program will not further the purposes of the program;

(ii) The firm fails to meet the specifications of paragraphs (b), (c), (d), (e), (f), (g), (h), or (i) of this section;

(iii) The firm fails to meet the requirements for eligibility under Criterion A or B, as specified in paragraph (b)(1)(i) of this section, or, for co-located wholesale/retail firms, the firm fails to meet the requirements of paragraph (b)(1)(vi) of this section, for the time period specified in paragraph (k)(2) of this section;

(iv) The firm fails to maintain the necessary business integrity to further the purposes of the program, as specified in paragraph (b)(3) of this section. Such firms shall be withdrawn for lack of business integrity for periods of time in accordance with those stipulated in paragraph (k)(3) of this section for specific business integrity findings;

(v) The firm has been found to be circumventing a period of disqualification or a civil money penalty through a purported transfer of ownership;

(vi) The firm has failed to pay in full any fiscal claim assessed against the firm under §278.7 or any fines assesses under §§278.6(ℓ) and 278.6(m) or a transfer of ownership civil

money penalty assessed under §278.6(f); or

(vii) The firm is required under State and/or local law to charge tax on eligible food purchased with coupons or to sequence or allocate purchases of eligible foods made with coupons and cash in a manner inconsistent with §272.1 of these regulations.

(2) The FNS officer in charge shall issue a notice to the firm by certified mail or personal service to inform the firm of the determination and of the review procedure. FNS shall remove the firm from the program if the firm does not request review within the period specified in §279.5.

(m) Refusal to accept correspondence or to respond to inquiries.

FNS may withdraw or deny the authorization of any firm which:

(1) Refuses to accept correspondence from FNS;

(2) Fails to respond to inquiries from FNS within a reasonable time; or

(3) Cannot be located by FNS with reasonable effort.

(n) Periodic reauthorization.

At the request of FNS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm's application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm's approval to participate in the program.

(o) Applications containing false information.

The filing of any application containing false or misleading information may result in the denial of

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approval for participation in the program, as specified in paragraph (k) of this section, or disqualification of a firm from participation in the program, as specified in §278.6, and may subject the firm and persons responsible to civil or criminal action.

(p) Administrative review.

Any withdrawal or denial of authorization to participate in the program shall be subject to administrative review under §278.8.

(q) Use and disclosure of information provided by firms.

With the exception of EINs and SSNs, any information collected from retail food stores and wholesales food concerns, such as ownership information and sales and redemption data, may be disclosed for purposes directly connected with the administration and enforcement of the Food Stamp Act and these regulations, and can be disclosed to and used by State agencies that administer the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). Such information may also be disclosed to and used by Federal and State law enforcement and investigative agencies for the purpose of administering or enforcing other Federal or State law, and the regulations issued under such other law. Such disclosure and use shall also include companies or individuals under contract for the operation by, or on behalf of FNS to accomplish an FNS function. Such purposes include the audit and examination of such information by the Comptroller General of the United States authorized by any other provision of law. Any person who publishes, divulges, discloses, or makes known in

any manner or to any extent not authorized by Federal law or regulations any information obtained under this paragraph shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both. Safeguards with respect to employee identification numbers (EINs) are contained in paragraph (q)(2) of this section. Safeguards with respect to Social Security numbers (SSNs) are contained in paragraph (q)(3) of this section.

(1) Criteria for requesting information. FNS shall determine what information can be disclosed and which government agencies have access to that information based on the following criteria:

(i) Federal and State law enforcement or investigative agencies or instrumentalities administering or enforcing specified Federal and State laws, or regulations issued under those laws, have access to certain information maintained by FNS. Such agencies or instrumentalities must have among their responsibilities the enforcement of law or the investigation of suspected violations of law. However, only certain Federal entities have access to information involving SSNs and EINs in accordance with paragraph (q)(1)(ii) of this section;

(ii) Except for SSNs and EINs, information provided to FNS by applicants and authorized firms participating in the FSP may be disclosed and used by qualifying Federal and State entities in accordance with paragraph (q)(1)(i) of this section. The disclosure of SSNs and EINs is limited only to qualifying Federal agencies or instrumentalities which otherwise have access to SSNs and EINs based on law and routine use. Release of information under this

paragraph shall be limited to information relevant to the administration or enforcement of the specified laws and regulations, as determined by FNS;

(iii) Requests for information must be submitted in writing, including electronic communication, and must clearly indicate the specific provision of law or regulations, which would be administered or enforced by access to, requested information, and the relevance of the information to those purposes. If a formal agreement exists between FNS and another agency or instrumentality, individual written requests may be unnecessary. FNS may request additional information if needed to clarify a request;

(iv) Disclosure by FNS is limited to: information about applicant stores and concerns with applications on file; information about authorized stores participating in the FSP; and information about unauthorized entities or individuals illegally accepting or redeeming food stamps;

(v) Requests for information disclosure by FNS may involve a specific store or concern, or some or all stores and concerns covered by paragraph (q)(1)(iv) of this section. In addition, FNS may sign agreements allowing certain government entities direct access to appropriate FNS data, with access to EINs and SSNs limited only to other Federal agencies and instrumentalities that otherwise have access to such numbers.

(2) Employer identification numbers.

(i) The Department may have access to the EINs obtained pursuant to paragraph (b)(5) of this section for the purpose of establishing and maintaining a list of the names and EINs of the stores and concerns for use in

determining those applicants who previously have been sanctioned or convicted under sections 12 and 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2021 or 2024). The Department also may share EINs with other Federal agencies and instrumentalities that otherwise have access to EINs if the Department determines that such sharing would assist in verifying and matching such information against information maintained by such other agency or instrumentality. Any such information shared pursuant to this paragraph may be used by the Department or such other agency or instrumentality for the purpose of effective administration and enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. See Treas. Reg. §301.6109-2 (b) and (c) (26 CFR 301.6109-2 (b) and (c)).

(ii) The only persons permitted access to EINs obtained pursuant to paragraph (b) of this section are officers and employees of the United States, who otherwise have access and whose duties or responsibilities require access to the EINs for the administration or enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. See Treas. Reg. §301.6109-2 (d)(1) (26 CFR 301.6109-2 (d)(1)).

(iii) The Department or any agency or instrumentality of the United States shall provide for any additional safeguards that the Secretary of the Treasury determines to be necessary or appropriate to protect the confidentiality of the EINs. The Department may also provide for any additional safeguards to protect the confidentiality of EINs so

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long as these safeguards are consistent with any safeguards determined by the Secretary of the Treasury to be necessary or appropriate. See Treas. Reg. §301.6109-2 (d)(2) (26 CFR 301.6109-2 (d)(2)).

(iv) EINs maintained by the Department or maintained by any agency or instrumentality of the United States pursuant to §278.1(b)(5) are confidential. Except as provided in paragraph (q)(2)(ii) of this section above, no officer or employee of the United States who has or had access to any such EIN may disclose that number in any manner. For purposes of paragraph (q)(2)(iv) of this section the term officer or employee includes a former officer or employee. See Treas. Reg. §301.6109-2 (e) (26 CFR 301.6109 (e)).

(v) Sections 7213(a) (1), (2) and (3) of the Internal Revenue Code of 1986 apply with respect to the unauthorized, willful disclosure to any person of EINs obtained by the Department pursuant to §278.1(b)(5) in the same manner and to the same extent as sections 7213(a) (1), (2) and (3) apply with respect to unauthorized disclosure of returns and return information described in those sections. Section 7213(a)(4) of the Internal Revenue Code of 1986 applies with respect to the willful offer of any item of material value in exchange for any EIN obtained by the Department pursuant to §278.1(b)(5) in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return information) described in that section. See Treas. Reg. §301.6109-2(f) (26 CFR 301.6109-2 (f)).

(3) Social Security Numbers.

(i) The Department may have access to SSNs obtained pursuant to paragraph (b)(5) of this section for the purpose of establishing and maintaining a list of names and SSNs of stores and concerns for use in determining those applicants who previously have been sanctioned or convicted under section 12 or 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2021 or 2024). The Department may use this determination of sanctions and convictions in administering sections 12 and 15 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2018, 2021). The Department also may share SSNs with other Federal agencies and instrumentalities if the Department determines that such sharing would assist in verifying and matching such information against information maintained by the Department or such other agency or instrumentality. Any such information shared pursuant to this paragraph shall be used for the purpose of effective administration and enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws.

(ii) The only persons permitted access to SSNs obtained pursuant to paragraph (b) of this section are officers and employees of the United States, who otherwise have access, and whose duties or responsibilities require access to the SSNs for the administration or enforcement of the Food Stamp Act of 1977, as amended, or for the purpose of investigating violations of other Federal laws or enforcing such laws. Such access shall also include companies or individuals under contract for the operation by, or on behalf of FNS to accomplish an FNS function.

(iii) The Department shall provide for all additional safeguards that the Commissioner of the Social Security Administration determines to be necessary or appropriate to protect the confidentiality of the SSNs. The Department may also provide for any additional safeguards to protect the confidentiality of SSNs so long as these safeguards are consistent with any safeguards determined by the Commissioner of the Social Security Administration to be necessary or appropriate.

(iv) The SSNs and related records that are obtained or maintained by authorized persons are confidential, and no officer or employee shall disclose any such SSN or related record except as authorized. The term "related record" means any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a request for a SSN is maintained. For purposes of paragraph (q)(3)(iv) of this section the term "officer or employee" includes a former officer or employee.

(v) The sanctions under sections 7213(a) (1), (2) and (3) of the Internal Revenue Code of 1986 will apply with respect to the unauthorized, willful disclosure to any person of SSNs and related records obtained or maintained in the same manner and to the same extent as sections 7213(a)(1), (2) and (3) apply with respect to unauthorized disclosures of returns and return information described in those sections. The sanction under section 7213(a)(4) of the Internal Revenue Code of 1986 will apply with respect to the willful offer of any item of material value in exchange for any SSN or related record in the same manner and to the same extent as section 7213(a)(4) applies with

respect to offers (in exchange for any return or return information) described in that section.

(4) FNS initiated matches. Under the restrictions noted in paragraph (q) of this section, FNS will periodically initiate cross matches of retailer data with other Federal and State agencies' files for the purpose of verifying information provided by applicant and participating firms, and for the purposes of administering and enforcing other Federal or State laws. Such matches could involve all firms participating after implementation for the purpose of verifying information such as, but not limited to, SSNs and retail sales data.

(r) Homeless Meal Providers.

FNS shall authorize as retail food stores, those public and private nonprofit homeless meal providers, which apply and qualify for authorization to accept food stamps from homeless food stamp recipients. Such meal providers must be public or private nonprofit organizations as defined by the Internal Revenue Service (I.R.C. 501(c)(3)), must serve meals that include food purchased by the provider, must meet the requirements of paragraphs (a) and (b) of this section, and must be approved by an appropriate State or local agency, pursuant to §272.9. Public and private nonprofit homeless meal providers shall be responsible for obtaining approval from an appropriate State or local agency and shall provide written documentation of such approval to FNS prior to approval of the meal provider's application for authorization. (If such approval is subsequently withdrawn, FNS authorization shall be withdrawn). Public and private homeless meal

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providers serving meals which consist wholly of donated foods shall not be eligible for authorization. In an area in which FNS, in consultation with the Department's Office of Inspector General, finds evidence that the authorization of a public and private nonprofit homeless meal provider would damage the Food Stamp Program's integrity, FNS shall limit the participation of that public and private nonprofit homeless meal provider, unless FNS determines that the establishment or shelter is the only one of its kind serving the area.

(s) Reporting abuses.

Each authorized retail food store shall post in a suitable and conspicuous location in the store a sign designed and provided by FNS which provides information on how persons may report abuses they have observed in the operation of the program. Refusal or repeated failure to display such a sign by an authorized retail food store may result in the withdrawal of the firm's approval to participate in the program.

(t) Periodic notification.

The FNS will issue periodic notification to participating retail stores and wholesale food concerns to clarify program eligibility criteria, including the definitions of "Retail food store", "Staple foods", "Eligible foods", and "Perishable foods". At a minimum, such information will be provided to stores at the time of authorization, reauthorization and upon request.

§278.2 Participation of retail food stores.

(a) Use of coupons.

Coupons may be accepted by an authorized retail food store only from eligible households or the households' authorized representative, and only in exchange for eligible food. Coupons may not be accepted in exchange for cash, except when cash is returned as change in a transaction in which coupons were accepted in payment for eligible food under paragraph (d) of this section. Coupons may not be accepted in payment of interest on loans or for any other nonfood use. An authorized retail food store may not accept coupons from another retail food store, except that public or private nonprofit homeless meal providers may redeem coupons for eligible food through authorized retail food stores.

(b) Equal treatment for coupon customers.

Coupons shall be accepted for eligible foods at the same prices and on the same terms and conditions applicable to cash purchases of the same foods at the same store except that tax shall not be charged on eligible foods purchased with coupons. However, nothing in this part may be construed as authorizing FNS to specify the prices at which retail food stores may sell food. However, public or private nonprofit homeless meal providers may only request voluntary use of food stamps from homeless food stamp recipients and may not request such household using food stamps to pay more than the average cost of the food purchased by the public or private nonprofit homeless meal provider contained in a meal served to the patrons of the meal service. For purposes of this section, "average cost" is determined by averaging food costs over a period of up to one calendar

month. Voluntary payments by food stamp recipients in excess of such costs may be accepted by the meal providers. The value of donated foods from any source shall not be considered in determining the amount to be requested from food stamp recipients. All indirect costs, such as those incurred in the acquisition, storage, or preparation of the foods used in meals shall also be excluded. In addition, if others have the option of eating free or making a monetary donation, food stamp recipients must be provided the same option of eating free or making a donation in money or food stamps. No retail food store may single out coupon users for special treatment in any way.

(c) Accepting coupons.

No authorized retail food store may accept coupons marked "paid," "canceled," or "specimen." Nor may a retail food store accept coupons bearing any cancellation or endorsement, or coupons of other than the 1-dollar denomination which have been detached from the coupon books prior to the time of purchase or delivery of eligible food unless the detached coupons are accompanied by the coupon books which bear the same serial numbers that appear on the detached coupons. However, in the case of public or private nonprofit homeless meal providers, retail food stores may accept detached coupons, which have been accepted by the homeless meal provider. It is the right of the household member or the authorized representative to detach the coupons from the book.

(d) Making change.

An authorized retail food store shall use, for the purpose of making

change, uncanceled and unmarked 1-dollar coupons which were previously accepted for eligible foods. If change in an amount of less than 1-dollar is required, the eligible household shall receive the change in cash. However, in the case of public or private nonprofit homeless meal providers, neither cash change nor credit slips shall be provided under any circumstances when food stamps are used to purchase meals. At no time may cash change in excess of 99 cents be returned in a coupon transaction. An authorized retail food store may not engage in a series of coupon transactions the purpose of which is to provide the same food stamp customer an amount of cash change greater than the maximum 99 cents cash change allowed in one transaction.

(e) Accepting coupons before delivery.

Food retailers may not accept coupons before delivering the food, retain custody of any unspent coupons, or in any way prevent an eligible household from using coupons in making purchases from other authorized firms. However, a nonprofit cooperative food-purchasing venture may accept coupons from a member of the cooperative at the time the member places a food order. The food ordered must be made available to the member within 14 days from the day the cooperative receives the member's coupons.

(f) Paying credit accounts.

Coupons may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit.

(g) Redeeming coupons.

Authorized retail food stores may exchange coupons accepted in accordance with this part for face value upon presentation through the banking system or through a wholesale food concern authorized to accept coupons from that retailer. Authorized drug addict or alcoholic treatment and rehabilitation programs, group living arrangements, and shelters for battered women and children may present coupons for redemption through authorized wholesale food concerns. A drug addict or alcoholic treatment center, group living arrangement, or shelter for battered women and children may purchase food in authorized retail food stores as the authorized representative of its participating households. Public or private nonprofit homeless meal providers may purchase food in authorized retail food stores and through authorized wholesale food concerns. Authorized drug addict and alcoholic treatment and rehabilitation programs, group living arrangements, shelters for battered women and children, and public or private nonprofit homeless meal providers for homeless food stamp households shall not present coupons directly to an insured financial institution for redemption.

(h) Identifying coupon users.

Coupons may not knowingly be accepted from persons who have no right to possession of coupons. If a food retailer has any cause to believe that a person presenting coupons has no right to use the coupons, the food retailer should request the person to show the ID card of the household to establish the right of that person to use the coupons. Where photo ID cards are in use, the

person presenting the ID card need not be pictured on the card. Public or private nonprofit homeless meal providers redeeming detached coupons through retail food stores shall present their retailer authorization card as proof of their eligibility to redeem coupons through retail food stores.

(i) Checking meal delivery service recipients.

A nonprofit meal delivery service shall require the recipient of a delivered meal to show the marked ID card establishing the recipient's right to use coupons for that service the first time that the recipient offers coupons in payment for the service, and shall request the marked ID card at any time the nonprofit meal delivery service has cause to question the continued eligibility of the recipient to use coupons for delivered meals.

(j) Checking hunting and fishing equipment users.

Authorized Alaskan retailers shall require coupon customers wanting to purchase hunting and fishing equipment with coupons to show their ID cards to determine that they live in an area designated by FNS as one in which persons are dependent upon hunting and fishing for subsistence.

(k) Checking participants in restaurants.

A restaurant operating under a State contract shall require a household purchasing meals to show the marked ID card establishing the household's right to purchase meals with coupons unless the personnel of the restaurant know that the program participant tendering coupons is eligible to use coupons to purchase meals.

(ℓ) Checking public and private nonprofit homeless meal provider recipients.

Public and private nonprofit homeless meal providers shall establish a food stamp patron's right to purchase meals with coupons.

§278.3 Participation of wholesale food concerns.

(a) Accepting coupons.

An authorized wholesale food concern may accept endorsed coupons from one or more specified authorized retail food stores, from one or more specified authorized nonprofit cooperative food-purchasing ventures, from one or more specified authorized group living arrangements, from one or more specified authorized drug addict or alcoholic treatment programs, from one or more specified authorized shelters for battered women and children, or, from one or more specified public or private nonprofit homeless meal providers if the coupons are accompanied by a properly filled-out and signed redemption certification, and are not marked "paid," "canceled," or "specimen." A wholesaler authorized to accept coupons from an authorized drug addict or alcoholic treatment program, or from an authorized group living arrangement, or from an authorized shelter for battered women and children, or from one or more public or private nonprofit homeless meal providers may accept coupons from that treatment program, or group living arrangement, or shelter for battered women and children, or from one or more public or private nonprofit homeless meal providers, only in exchange for food.

(b) Accepting legally obtained coupons.

No authorized wholesale food concern may accept coupons if the wholesaler knows or has reasonable cause to believe that the coupons were not legally obtained for eligible food.

(c) Redeeming coupons.

An authorized wholesale food concern may redeem coupons, properly accepted from retailers, through the banking system, upon presentation of the coupons with:

(1) The authorized retail food store's properly filled-out and signed redemption certificate for the coupons; and

(2) The authorized wholesale food concern's properly filled-out and signed redemption certificate.

(d) Handling retailer redemption certificates.

No authorized wholesale food concern may alter, prepare, or complete an authorized retail food store's redemption certificate.

§278.4 Procedure for redeeming coupons.

(a) Coupons accepted without authorization.

Coupons accepted by a retail food store or a wholesale food concern before the receipt by the firm of an authorization card from FNS may not be presented for redemption unless the FNS officer in charge has approved the redemption under §278.7(c). Burned or mutilated coupons shall be presented for redemption to the FNS officer in charge as provided in §278.7(d).

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(b) Endorsing coupons.

Each authorized retail food store or authorized wholesale food concern shall mark its authorization number or name on each coupon before it presents the coupons for redemption.

(c) Using redemption certificates.

FNS will provide all authorized firms with redemption certificates. Wholesale food concerns and retail food stores, except for drug addict and alcoholic treatment and rehabilitation programs and public or private nonprofit homeless meal providers, shall use the redemption certificates to present coupons to insured financial institutions for credit or for cash. All retail food stores which wish to redeem coupons at wholesale food concerns shall use the redemption certificates for that purpose. An authorized retail firm using redemption certificates to redeem coupons shall fill out the redemption certificate to show the value of the coupons redeemed, the name of the insured financial institution or wholesaler, the date, and the signature and title of the official of the firm redeeming coupons.

§278.5 Participation of insured financial institutions.

(a) Accepting coupons.

(1) Financial institutions that are insured by the Federal Deposit Insurance Corporation (FDIC) or financial institutions which are insured under the Federal Credit Union Act and which have retail food stores or wholesale food concerns in their field of membership may redeem coupons only from authorized retail food stores, meal

services, and wholesale food concerns in accordance with the rules contained in this Part and instructions of the Federal Reserve Banks.

No financial institution may impose on or collect from a retail food store a fee or other charge for redemption of coupons that are submitted to the financial institution in a manner consistent with the requirements, except for coupon cancellation, for the presentation of coupons by the financial institution to the Federal Reserve banks. Coupons submitted to insured financial institutions for credit or cash must be properly endorsed in accordance with §278.4 of this part and shall be accompanied by a properly completed and signed redemption certificate. All verified and encoded redemption certificates accepted by insured financial institutions shall be forwarded with the corresponding coupon deposits to the Federal Reserve Bank along with the accompanying Food Coupon Deposit Document (Form FNS-521). In accordance with the Federal Reserve requirements, the coupon deposit value entered on the Food Coupon Deposit Document must be equal to the actual value of coupons being deposited and to the total value of verified amounts encoded on the corresponding redemption certificates.

(2) An insured financial institution shall verify the amount of the coupons being redeemed and record the amount in the designated space on the redemption certificate. In order to conform with Federal Reserve requirements, the verified amount shall be recorded in the appropriate field on the redemption certificate using Magnetic Ink Character Recognition (MICR) encoding. Redemption

certificates accepted by insured financial institutions shall be forwarded with the corresponding coupon deposits to the Federal Reserve Bank along with the Food Coupon Deposit Document (Form FNS-521).

(3) Redeemed coupons must be indelibly cancelled on the face of the coupon by the first insured financial institution receiving them. If the cancellation on the coupon face does not show the depositing institution's name or its routing symbol transit number, this identifying information must appear on the straps affixed to each bundle of coupons of like denomination. Deposits not meeting these cancellation requirements may be returned to the depositing institution for reprocessing. Retail food stores may not be required to cancel the coupons by the insured financial institution nor may the insured financial institution charge the retail food stores a fee or other charge for cancellation of coupons. A portion of a coupon consisting of less than three-fifths of a whole coupon may not be redeemed.

(4) Insured financial institutions which are members of the Federal Reserve System, insured nonmember clearing institutions, and insured nonmember institutions which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member institution on the books of a Federal Reserve Bank may forward coupons directly to the Federal Reserve Bank. Other insured financial institutions may forward canceled coupons through ordinary collection channels.

(b) Role of Federal Reserve Banks.

Federal Reserve Banks, acting as fiscal agents of the United States, will

receive canceled coupons for collection as cash items from armed forces installations, member insured financial institutions of the Federal Reserve System, nonmember clearing insured financial institutions, and nonmember insured financial institutions which have arranged with a Federal Reserve Bank to deposit coupons for credit to the account of a member insured financial institution on the books of the Federal Reserve Bank, and will charge those items to the general account of the Treasurer of the United States.

(c) FNS liability for losses.

FNS shall not be liable for the value of any coupons lost, stolen, or destroyed while in the custody of an insured financial institution or for the value of coupons lost, stolen, or destroyed while in transit from an insured financial institution to a Federal Reserve Bank.

(d) FNS use of coupons to detect violations.

Regardless of any other provision in these regulations, coupons may be issued to, purchased by, or redeemed by persons authorized by FNS to use those coupons in examining and inspecting program operations, and for other purposes determined by FNS to be required for proper administration of the program. Coupons which have been so issued and used, as well as any coupons which have been issued under paragraph (g) of this section, or which FNS believes may have been issued, transferred, negotiated, used, or received in violation of this subchapter or of any applicable statute, shall at the request of FNS and on issuance of a receipt for them be turned over to FNS by the insured financial institution

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receiving the coupons, or by any other person to whom the request is addressed, together with any certificate(s) of redemption accompanying the coupons. Any coupons so requested shall not be eligible for redemption through Federal Reserve Banks or other collection channels. However, FNS may redeem coupons from any insured financial institution or person by payment of the face amount of the coupons upon determination by FNS that this direct redemption of coupons is warranted. FNS shall determine the proper disposition of any coupons held by FNS on completion of the examination or inspection in which the coupons were used. Claims or demands for unredeemed coupons surrendered to FNS may be mailed to the local FNS field office for the project area involved.

(e) Selling coupons to stores for internal checks.

FNS may sell coupons at face value to any authorized retail food store which wishes to use coupons to conduct internal checks of coupon transactions. The retail food store must submit a written request to FNS which shall include a certification that the store recognizes that its use of coupons will not affect FNS action to enforce program regulations and that the requested coupons will be used only for internal checks of the store's employees and only to uncover sales of items other than eligible foods. The request shall also include the name of the city or county in which the stores to be checked through the use of the requested coupons are located and the name and address of any outside agency with which the retail food store has or will have a contract to conduct

checks of the store's employees using coupons. The request shall be directed to the Benefit Redemption Division, FSP, FNS, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302, and shall be accompanied by a check or money order made payable to the Food and Nutrition Service to cover the face value cost of the coupons requested. Coupons bought by retail food stores for use in internal checks may be later redeemed for full value in accordance with §278.4, and in redeeming those coupons, retail food stores are authorized to make the certification required for redemption.

(f) Continued participation of households under investigation.

Upon the written request of Federal, State, or local government agencies which have authority to investigate, and are investigating, suspected violations of Federal or State statutes concerning the enforcement of the Food Stamp Act or the regulations, the State agency may allow ineligible households to continue program participation. The State agency may allow the households to continue participation in the program until the earlier of

(1) Expiration of the period of 90 days after the request is received or any longer period which FNS, upon request of the State agency, may approve in a particular case, or

(2) Receipt of notification from the investigative agency that participation may be terminated or that the investigation has been completed. Regardless of any other provision of these regulations, FNS may not hold the State agency liable for the value of any

coupons issued to households under this paragraph.

§278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.

(a) Authority to disqualify or subject to a civil money penalty.

FNS may disqualify any authorized retail food store or authorized wholesale food concern from further participation in the program if the firm fails to comply with the Food Stamp Act of 1977, as amended, or this Part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system, or the disqualification of a firm from the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), as specified in paragraph (e)(8) of this section.

Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for a period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section. Any firm which has been disqualified and which wishes to be reinstated at the end of the period of disqualification, or at any later time, shall file a new application under §278.1 so that FNS may determine whether reauthorization is appropriate. The application may be filed no earlier than 10 days before the end of the period of disqualification. FNS may, in lieu of a disqualification, subject a firm to a civil money penalty of up to an amount

specified in §3.91(b)(3)(i) of this title for each violation if FNS determines that a disqualification would cause hardship to participating households. FNS may impose a civil money penalty of up to an amount specified in §3.91(b)(3)(ii) of this title for each violation in lieu of a permanent disqualification for trafficking, as defined in §271.2 of this chapter, in accordance with the provisions of paragraphs (i) and (j) of this section.

(b) Charge letter—

(1) General provisions. Any firm considered for disqualification or imposition of a civil money penalty under paragraph (a) of this section or a fine as specified under paragraph (ℓ) or (m) of this section shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions, which FNS believes, constitute a basis for disqualification or imposition of a civil money penalty or fine. The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter. The firm's response shall set forth a statement of evidence, information, or explanation concerning the specified violations or acts. The firm shall make its response, if any, to the officer in charge of the FNS field office which has responsibility for the project area in which the firm is located. In the case of a firm for which action is taken in accordance with paragraph (e)(8) of this section, the charge letter shall inform such firm that the disqualification

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action is not subject to administrative or judicial review, as specified in paragraph (e)(8) of this section.

(2) Charge letter for trafficking.

(i) The charge letter shall advise a firm being considered for permanent disqualification based on evidence of trafficking as defined in §271.2 that the firm must notify FNS if the firm desires FNS to consider the sanction of a civil money penalty in lieu of permanent disqualification. The charge letter shall also advise the firm that the permanent disqualification shall be effective immediately upon the date of receipt of the notice of determination, regardless of whether a request for review is filed in accordance with §279.5 of this chapter. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period. Firms that request and are determined eligible for a civil money penalty in lieu of permanent disqualification for trafficking may continue to participate in the program pending review and shall not be required to pay the civil money penalty pending appeal of the trafficking determination action.

(ii) Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence as specified in §278.6(i), that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in §278.6(i). This information and evidence shall be submitted within 10 days, as specified in §278.6(b)(1).

(iii) If a firm fails to request consideration for a civil money penalty

in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in §278.6(b)(1), the firm shall not be eligible for such a penalty.

(c) Review of evidence.

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with §279.5 of this chapter. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period. Firms that request and are determined eligible for a civil money penalty in lieu of permanent disqualification for trafficking may continue to participate in the program pending review and shall not be required to pay the civil money penalty pending appeal of the trafficking determination action. In the case of a firm for which action is taken in accordance with paragraph (e)(8) of this section, the determination notice shall inform such firm that the disqualification action is not subject to administrative or judicial review, as specified in paragraph (e)(8) of this section.

(d) Basis for determination.

The FNS regional office making a disqualification or penalty determination shall consider:

- (1) The nature and scope of the violations committed by personnel of the firm,
- (2) Any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and
- (3) Any other evidence that shows the firm's intent to violate the regulations.

(e) Penalties.

FNS shall take action as follows against any firm determined to have violated the Act or regulations. For the purposes of assigning a period of disqualification, a warning letter shall not be considered to be a sanction. A civil money penalty and a disqualification shall be considered sanctions for such purposes. The FNS regional office shall:

(1) Disqualify a firm permanently if:

- (i) Personnel of the firm have trafficked as defined in §271.2; or
- (ii) Violations such as, but not limited to, the sale of ineligible items occurred and the firm had twice before been sanctioned.

(iii) It is determined that personnel of the firm knowingly submitted information on the application that contains false information of a substantive nature that could affect the eligibility of the firm for authorization in the program, such as, but not limited to, information related to:

- (A) Eligibility requirements under §278.1(b), (c), (d), (e), (f), (g) and (h);
- (B) Staple food stock;

(C) Annual gross sales for firms seeking to qualify for authorization under Criterion B as specified in the Food Stamp Act of 1977, as amended;

(D) Annual staple food sales;

(E) Total annual gross retail food sales for firms seeking authorization as co-located wholesale/retail firms;

(F) Ownership of the firm;

(G) Employer Identification Numbers and Social Security Numbers;

(H) Food Stamp Program history, business practices, business ethics, WIC disqualification or authorization status, when the store did (or will) open for business under the current ownership, business, health or other licenses, and whether or not the firm is a retail and wholesale firm operating at the same location; or

(I) Any other information of a substantive nature that could affect the eligibility of the firm.

(2) Disqualify the firm for 5 years if it is to be the firm's first sanction, the firm had been previously advised of the possibility that violations were occurring and of possible consequences of violating the regulations, and the evidence shows that:

(i) It is the firm's practice to sell expensive or conspicuous nonfood items, cartons of cigarettes, or alcoholic beverages in exchange for food coupons; or

(ii) The firm's coupon redemptions for a specified period of time exceed its food sales for the same period of time; or

(iii) A wholesale food concern's redemptions of coupons for a specified period of time exceed the redemptions of all the specified authorized retail food stores, nonprofit cooperative food-purchasing ventures, group living arrangements, drug addict and alcoholic

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treatment programs, homeless meal providers, and shelters for battered women and children which the wholesale food concern was authorized to serve during that time; or

(iv) A wholesale food concern's stated redemptions of coupons for a particular retail food store, nonprofit cooperative food-purchasing venture, group living arrangement, drug addict and alcoholic treatment program, homeless meal providers, or shelters for battered women and children exceeded the actual amount of coupons which that firm or organization redeemed through the wholesaler; or

(v) Personnel of the firm knowingly accepted coupons from an unauthorized firm or an individual known not to be legally entitled to possess coupons.

(3) Disqualify the firm for 3 years if it is to be the first sanction for the firm and the evidence shows that:

(i) It is the firm's practice to commit violations such as the sale of common nonfood items in amounts normally found in a shopping basket and the firm was previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(ii) Any of the situations described in paragraph (e)(2) of this section occurred and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(iii) The firm is an authorized communal dining facility, drug addiction or alcoholic treatment and rehabilitation program, group living arrangement, homeless meal provider, meal delivery service, or shelter for battered women and children and it is the firm's practice

to sell meals in exchange for food coupons to persons not eligible to purchase meals with food coupons and the firm has been previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(iv) A wholesale food concern accepted coupons from an authorized firm which it was not authorized to serve and the wholesale food concern had been previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations; or

(v) The firm is an authorized retail food store and personnel of the firm have engaged in food coupon transactions with other authorized retail stores, not including treatment programs, group living arrangements, homeless meal providers, or shelters for battered women and children, and the firm had been previously advised of the possibility that violations were occurring and of the possible consequences of violating the regulations.

(vi) Personnel of the firm knowingly submitted information on the application that contained false information of a substantive nature relative to the ability of FNS to monitor compliance of the firm with FSP requirements, such as, but not limited to, information related to:

(A) Annual eligible retail food sales;

(B) Store location and store address and mailing address;

(C) Financial institution information; or

(D) Store name, type of ownership, number of cash registers, and non-food inventory and services.

(4) Disqualify the firm for 1 year if it is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items in amounts normally found in a shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations.

(5) Disqualify the firm for 6 months if it is to be the first sanction for the firm and the evidence shows that personnel of the firm have committed violations such as but not limited to the sale of common nonfood items due to carelessness or poor supervision by the firm's ownership or management.

(6) Double the appropriate period of disqualification prescribed in paragraphs (e)(2) through (5) of this section as warranted by the evidence of violations if the same firm has once before been assigned a sanction.

(7) Send the firm a warning letter if violations are too limited to warrant a disqualification.

(8) FNS shall disqualify from the Food Stamp Program any firm which is disqualified from the WIC Program:

(i) Based in whole or in part on any act which constitutes a violation of that program's regulation **and** which is shown to constitute a misdemeanor or felony violation of law, **or** for any of the following specific program violations:

(A) A pattern of claiming reimbursement for the sale of an amount of a specific food item which exceeds the store's documented inventory of that food item for a specified period of time;

(B) Exchanging WIC food instruments for cash, credit or

consideration other than eligible food; or the exchange of firearms, ammunition, explosives or controlled substances, as defined in section 802 of title 21 of the United States Code, for food instruments;

(C) A pattern of receiving, transacting and/or redeeming WIC food instruments outside of authorized channels;

(D) A pattern of exchanging non-food items for a WIC food instrument;

(E) A pattern of charging WIC customers more for food than non-WIC customers or charging WIC customers more than the current shelf price; or

(F) A pattern of charging for food items not received by the WIC customer or for foods provided in excess of those listed on the food instrument.

(ii) FNS shall not disqualify a firm from the Food Stamp Program on the basis of a WIC disqualification unless:

(A) prior to the time prescribed for securing administrative review of the WIC disqualification action, the firm was provided individual and specific notice that it could be disqualified from the Food Stamp Program based on the WIC violations committed by the firm;

(B) a signed and dated copy of such notice is provided to FNS by the WIC administering agency; and

(C) a determination is made in accordance with paragraph (a) of this section that such action will not cause a hardship for participating Food Stamp households.

(iii) Such a Food Stamp disqualification:

(A) Shall be for same length of time as the WIC disqualification;

(B) May begin at a later date than the WIC disqualification; and

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(C) Shall not be subject to administrative or judicial review under the Food Stamp Program.

(f) Criteria for civil money penalties for hardship and transfer of ownership.

(1) FNS may impose a civil money penalty as a sanction in lieu of disqualification when the firm subject to a disqualification is selling a substantial variety of staple food items, and the firm's disqualification would cause hardship to food stamp households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices. FNS may disqualify a store, which meets the criteria for a civil money penalty if the store had twice before been assigned a sanction. A civil money penalty for hardship to food stamp households may not be imposed in lieu of a permanent disqualification.

(2) In the event any retail food store or wholesale food concern which has been disqualified is sold or the ownership there of is otherwise transferred to a purchaser or transferee, the person or other legal entity who sells or otherwise transfers ownership of the retail food store or wholesale food concern shall be subjected to and liable for a civil money penalty in an amount to reflect that portion of the disqualification period that has not expired, to be calculated using the method found at §278.6(g). If the retail food store or wholesale food concern has been permanently disqualified, the civil money penalty shall be double the penalty for a ten-year disqualification period. The disqualification shall continue in effect at the disqualified location for the person or other legal entity who transfers ownership of the retail food store or

wholesale food concern notwithstanding the imposition of a civil money penalty under this paragraph.

(3) At any time after a civil money penalty imposed under paragraph (f)(2) of this section has become final under the provisions of Part 279, the Food and Nutrition Service may request the Attorney General institute a civil action to collect the penalty from the person or persons subject to the penalty in a district court of the United States for any district in which such person or persons are found, reside, or transact business.

(4) A bona fide transferee of a retail food store shall not be required to pay a civil money penalty imposed on the firm prior to its transfer. A buyer or transferee (other than a bona fide buyer or transferee) may not be authorized to accept or redeem coupons and may not accept or redeem coupons until the Secretary receives full payment of any penalty imposed on such store or concern.

(g) Amount of civil money penalties for hardship and transfer of ownership.

FNS shall determine the amount of the civil money penalty as follows:

(1) Determine the firm's average monthly redemptions of coupons for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.

(2) Multiply the average monthly redemption figure by 10 percent.

(3) Multiply the product arrived at in paragraph (g)(2) by the number of months for which the firm would have been disqualified under paragraph (e) of this section. The civil money penalty may not exceed an amount specified in §3.91(b)(3)(i) of this title for each violation.

(h) Notifying the firm of civil money penalties for hardship and transfer of ownership.

A firm has 15 days from the date the FNS regional office notifies the firm in writing in which to pay the civil money penalty, or to notify the regional office in writing of its intent to pay in installments as specified by the regional office. The firm must present to FNS a collateral bond as specified in §278.1(b)(4), within the same 15-day period. The civil money penalty must be paid in full by the end of the period for which the firm would have been disqualified. FNS shall:

(1) Disqualify the firm for the period determined to be appropriate under paragraph (e) of this section if the firm refuses to pay any of the civil money penalty;

(2) Disqualify the firm for a period corresponding to the unpaid part of the civil money penalty if the firm does not pay the civil money penalty in full or in installments as specified by the FNS regional office; or

(3) Disqualify the firm for the prescribed period if the firm does not present a collateral bond within the required 15 days. Any payment on a civil money penalty which have been received by FNS shall be returned to the firm. If the firm presents the required bond during the disqualification period, the civil money penalty may be

reinstated for the duration of the disqualification period.

(i) Criteria for eligibility for a civil money penalty in lieu of permanent disqualification for trafficking.

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in §271.2 if the firm timely submits to FNS substantial evidence, which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program. Firms assessed a CMP under this paragraph shall be subject to the applicable penalties included in §278.6(e)(2) through (6) for the sale of ineligible items. Only those firms for which a permanent disqualification for trafficking took effect on or after October 1, 1988, are eligible for a civil money penalty in lieu of permanent disqualification for trafficking, except that firms that have been disqualified but are awaiting a judicial review decision are eligible for a civil money penalty in lieu of a permanent disqualification. In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of a permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in §278.6(i)(1); and

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred **prior** to the occurrence of violations cited in the charge letter sent to the firm; and

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Criterion 3. The firm had developed and instituted an effective personnel training program as specified in §278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations; **or** it is only the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm. Upon the second occasion of trafficking involvement by any member of firm management uncovered during a subsequent investigation, a firm shall not be eligible for a civil money penalty in lieu of permanent disqualification. Notwithstanding the above provision, if trafficking violations consisted of the sale of firearms, ammunition, explosives or controlled substances, as defined in 21 U.S.C. §802, and such trafficking was conducted by the ownership or management of the firm, the firm shall not be eligible for a civil money penalty in lieu of permanent disqualification. For purposes of this section, a person is considered to be part of firm management if that individual has substantial supervisory responsibilities with regard to directing the activities and work assignments of store employees. Such supervisory responsibilities shall include the authority to hire employees for the store or to terminate the employment of individuals working for the store.

(1) Compliance policy standards. As specified in Criterion 1 above, in determining whether a firm has established an effective policy to prevent violations, FNS shall consider written and dated statements of firm policy which reflect a commitment to

ensure that the firm is operated in a manner consistent with this part 278 of current FSP regulations and current FSP policy on the proper acceptance and handling of food coupons. As required by Criterion 2, such policy statements shall be considered only if documentation is supplied which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation. In addition, in evaluating the effectiveness of the firm's policy and program to ensure FSP compliance and to prevent FSP violations, FNS may consider the following:

(i) Documentation reflecting the development and/or operation of a policy to terminate the employment of any firm employee found violating FSP regulations;

(ii) Documentation of the development and/or continued operation of firm policy and procedures resulting in appropriate corrective action following complaints of FSP violations or irregularities committed by firm personnel;

(iii) Documentation of the development and/or continued operation of procedures for internal review of firm employees' compliance with FSP regulations;

(iv) The nature and scope of the violations charged against the firm;

(v) Any record of previous firm violations under the same ownership; and

(vi) Any other information the firm may present to FNS for consideration.

(2) Compliance training program standards. As prescribed in Criterion 3 above, the firm shall have developed and implemented an effective training program for all managers and employees on the acceptance and

handling of food coupons in accordance with this part 278. A firm which seeks a civil money penalty in lieu of a permanent disqualification shall document its training activity by submitting to FNS its dated training curricula and records of dates training sessions were conducted; a record of dates of employment of firm personnel; and contemporaneous documentation of the participation of the violating employee(s) in initial and any follow-up training held prior to the violation(s). FNS shall consider a training program effective if it meets or is otherwise equivalent to the following standards:

(i) Training for all managers and employees whose work brings them into contact with food stamps or who are assigned to a location where food stamps are accepted, handled or processed shall be conducted within one month of the institution of the compliance policy under Criterion 1 above. Employees hired subsequent to the institution of the compliance policy shall be trained within one month of employment. All employees shall be trained periodically thereafter;

(ii) Training shall be designed to establish a level of competence that assures compliance with Program requirements as included in this part 278;

(iii) Written materials, which may include FNS publications and program regulations that are available to all authorized firms, are used in the training program. Training materials shall clearly state that the following acts are prohibited and are in violation of the Food Stamp Act and regulations: the exchange of food coupons, ATP cards or other program access devices for cash; and, in exchange for coupons, the sale of firearms, ammunition, explosives

or controlled substances, as the term is defined in section 802 of title 21, United States Code.

(j) Amount of civil money penalty in lieu of permanent disqualification for trafficking.

A civil money penalty assessed in accordance with §278.6(i) shall not exceed the amount specified in §3.91(b)(3), and shall not exceed the amount specified in §3.91(b)(3) for all violations occurring during a single investigation. FNS shall determine the amount of the civil money penalty as follows:

(1) Determine the firm's average monthly redemptions for the 12-month period ending with the month immediately preceding the month during which the firm was charged with violations;

(2) Multiply the average monthly redemption figure by 10 percent;

(3) For the first trafficking offense by a firm, multiply the product obtained in §278.6(j)(2) by 60 if the largest amount of food coupons, ATP cards, or other benefit instruments involved in a single trafficking transaction had a face value of \$99 or less. If the face value of coupons, ATP cards or other benefit instruments involved in the largest single trafficking transaction was \$100 or more, the amount of the product obtained in this paragraph shall be doubled;

(4) For a second trafficking offense by a firm, multiply the product obtained in §278.6(j)(2) by 120 if the largest amount of food coupons, ATP cards, or other benefit instruments involved in a single trafficking transaction had a face value of \$99 or less and the same firm has once before been sanctioned for trafficking in food

278.6(j)(4)-(m)

coupons, ATP cards, or other benefit instruments. If the face value of food coupons, ATP cards, or other benefit instruments involved in the largest single trafficking transaction was \$100 or more, the amount of the product obtained in this paragraph shall be doubled; and

(5) If a third trafficking offense is committed by the firm, the firm shall not be eligible for a civil money penalty in lieu of disqualification.

(k) Payment of civil money penalty in lieu of a permanent disqualification for trafficking.

Payment of the full amount of the civil money penalty in lieu of permanent disqualification for trafficking shall be made within 30 days of the date the final determination was received by the firm. If payment is not made within the prescribed period, the right to the civil money penalty in lieu of a permanent disqualification is forfeited and disqualification shall become effective immediately.

(ℓ) Fines for the acceptance of loose coupons.

FNS may impose a fine against any retail food store or wholesale food concern that accepts coupons that are not accompanied by the corresponding book cover, other than the denomination of coupons used for making change as specified in §278.2(d) or coupons accepted from homeless meal providers as specified in §278.2(c). The fine to be assessed against a firm found to be accepting loose coupons shall be \$500 per investigation plus an amount equal to double the face value of each loose coupon accepted, and may be assessed and collected in addition to any fiscal claim established by FNS. The fine

shall be paid in full within 30 days of the firm's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the store or concern to collect the fine. FNS may withdraw the authorization of the store, as well as other authorized locations of a multi-unit firm which are under the same ownership, for failure to pay such a fine as specified under §278.1(k). FNS may deny the authorization of any firm that has failed to pay such fines as specified under §278.1(j).

(m) Fines for unauthorized third parties that accept food stamps.

FNS may impose a fine against any individual, sole proprietorship, partnership, corporation or other legal entity not approved by FNS to accept and redeem food coupons for any violation of the provisions of the Food Stamp Act or the program regulations, including violations involving the acceptance of coupons. The fine shall be \$1,000 for each violation plus an amount equal to three times the face value of the illegally accepted food coupons. The fine shall be paid in full within 30 days of the individual's or legal entity's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine. FNS may withdraw the authorization of any firm that is under the same ownership as an unauthorized firm that has failed to pay such a fine, as specified under §278.1(k). FNS may deny authorization to any firm that has failed to pay such a fine, as specified under §278.1(j).

(n) Review of determination.

The determination of FNS shall be final and not subject to further administrative or judicial review unless a written request for review is filed within the period stated in §279.5 of this chapter. Notwithstanding the above, any FNS determination made on the basis of paragraph (e)(8) of this section shall not be subject to further administrative or judicial review.

(o) Delivery of notice.

The delivery by certified mail or personal service of any notice required of FNS by this part will constitute notice to the addressee of its contents.

§278.7 Determination and disposition of claims--retail food stores and wholesale food concerns.***(a) Claims against violators.***

FNS may establish and pursue claims against firms or other entities, which have accepted or redeemed coupons in violation of the Food Stamp Act or this part regardless of whether the firms or entities are authorized to accept food stamps. If a firm fails to pay a claim, FNS may collect the claim by offsetting against amounts due the firm on redemption of other coupons or by deducting the amounts due from bonds posted by firms in compliance with the provisions of §278.1(b)(4). FNS shall deny an application for authorization or reauthorization by a firm, which has failed to pay a claim.

(b) Forfeiture of a collateral bond.

If FNS establishes a claim against an authorized firm, which has previously been sanctioned, collection of

the claim may be through total or partial forfeiture of the collateral bond. If FNS determines that forfeiture is required for collection of the claim, FNS shall take one or more of the following actions, as appropriate.

(1) Determine the amount of the bond to be forfeited on the basis of the loss to the Government through violations of the Act, and this Part, as detailed in a letter of charges to the firm;

(2) Send written notification by certified mail-return receipt requested to the firm and the bonding agent, of FNS' determination regarding forfeiture of all or a specified part of the collateral bond, and the reasons for the forfeiture;

(3) Advise the firm and the bonding agent of the firm's right to administrative review of the claim determination;

(4) Advise the firm and the bonding agent that if payment of the current claim is not received directly from the firm, FNS shall obtain full payment through forfeiture of the bond;

(5) Proceed with collection on the bond for the amount forfeited if a request for review is not filed by the firm within the period established in §279.5, or if such review is unsuccessful; and

(6) Upon the expiration of time permitted for the filing of a request for administrative and/or judicial review, deposit the bond in a Federal Reserve Bank account or in the Treasury Account, General. If FNS requires only a portion of the face value of the bond to satisfy a claim, the entire bond will be negotiated, and the remaining amount returned to the firm.

(c) Coupons accepted without authorization.

(1) The FNS officer in charge may approve the redemption under §278.4 of coupons accepted by firms before the receipt of an authorization card from FNS if the following conditions exist:

(i) The coupons were received in accordance with the requirements of this part-governing acceptance of coupons except the requirement that the firm be authorized before acceptance;

(ii) The coupons were accepted by the firm in good faith, and without intent to circumvent this part; and

(iii) The firm receives authorization to participate in the program.

(2) Firms seeking approval to redeem coupons accepted without authorization shall present a written application for approval to the local FNS field office. This application shall be accompanied by a written statement signed by the firm of all the facts about the acceptance of the coupons. The statement shall also include a certification that the coupons were accepted in good faith, and without any intent to circumvent this part.

(d) Burned or mutilated coupons.

FNS may redeem burned or mutilated coupons only to the extent that the Bureau of Engraving and Printing of the United States Treasury Department can determine the value of the coupons. The firm presenting burned or mutilated coupons for redemption shall submit the coupons to the local FNS field office with a properly filled-out redemption certificate. In the section of the redemption certificate for entering the amount of coupons to be redeemed, an

estimate of the value of the burned or mutilated coupons submitted for redemption shall be entered if the exact value of the coupons is unknown. The phrase "Deputy Administrator for Financial Management, FNS, USDA," should be entered in the section of the redemption certificate for entering the name and address of the insured financial institution or wholesaler.

(e) Old series coupons.

FNS may redeem the old series food coupons issued in 50-cent, 2-dollar, and 5-dollar denominations when they are presented for redemption. Firms presenting the coupons for redemption shall submit the coupons to the local FNS field office with a properly completed redemption certificate and a written statement, signed by a representative of the firm, detailing the circumstances of the acceptance of the coupons.

(f) Denials of claims brought by authorized firms against FNS.

If a claim brought by a firm against FNS under this section is denied in whole or in part, notification of this action shall be sent to the firm by certified mail or personal service. If the firm is aggrieved by this action, it may seek administrative review as provided in §278.8.

(g) Lost or stolen coupons.

FNS may not be held liable for claims from retail food stores, meal services, or wholesale food concerns for lost or stolen coupons.

§278.8 Administrative review - retail food stores and wholesale food concerns.

(a) Requesting review.

A food retailer or wholesale food concern aggrieved by administrative action under §§278.1, 278.6 or 278.7 may, within the period stated in §279.5 of this chapter, file a written request for review of the administrative action with the review officer. However, disqualification actions taken against firms in accordance with §278.6(e)(8) shall not be subject to administrative or judicial review. On receipt of the request for review, the questioned administrative action shall be stayed pending disposition of the request for review by the review officer, except in the case of a permanent disqualification as specified in §278.6(e)(1). A disqualification for failure to pay a civil money penalty shall not be subject to an administrative review.

(b) Addressing the request.

The request for review shall be filed with the Director, GMD, Administrative Review Branch, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

(c) Review procedure.

The procedure for food stamp reviews is published in Part 279 and is available upon request from the Director, Administrative Review Branch.

§278.9 [Intentionally omitted as not relevant to store eligibility]]

§278.10 [Reserved]

PART 279 -- ADMINISTRATIVE AND JUDICIAL REVIEW -- FOOD RETAILERS AND FOOD WHOLESALERS

Subpart A--Administrative Review—General

Sec.

- 279.1 Scope and purpose.
- 279.2 Administrative review officer.
- 279.3 Authority and jurisdiction.
- 279.4 Rules of procedure.

Subpart B--Rules of Procedure

Sec.

- 279.5 Manner of filing requests for review.
 - 279.6 Content of request for review.
 - 279.7 Action upon receipt of a request for review.
 - 279.8 Determination of the administrative review officer.
 - 279.9 Legal advice and extensions of time.
- ### **Subpart C--Judicial Review**
- #### **Sec.**
- 279.10 Judicial review.
 - 279.11 Implementation of amendments relating to administrative and judicial review.

Subpart A--Administrative Review--General

§279.1 Scope and purpose.

Subpart A sets forth the procedure for the designation of the administrative review officers and the authority and jurisdiction of those officers. Subpart B states the rules of procedure to be followed in the filing and disposition of the requests for review provided for in §278.8. Subpart C concerns the rights of food retailers and food wholesalers to judicial review of the final determinations of the administrative review officer.

§279.2 Administrative review officer.

(a) Designation of review officers.

The Administrator, FNS, shall designate one or more persons to act as administrative review officers.

(b) Assigning cases to review officers.

The officers shall serve for periods which the Administrator, FNS, shall determine. Changes in designations and additional designations may be made from time to time at the discretion of the Administrator, FNS. When more than one administrative review officer has been designated, requests for review will be assigned for handling to individual administrative review officers by a person designated by the Administrator, FNS. The names of the administrative review officers shall be on file in the Office of the Administrator, FNS.

§279.3 Authority and jurisdiction.

(a) Jurisdiction.

An administrative review officer shall act for the Department on requests for review filed by firms aggrieved by any of the following actions:

(1) Denial of an application or withdrawal of authorization to participate in the program under §278.1;

(2) Imposition of a fine under §§278.6(l) or 278.6(m) of this chapter or disqualification from participation in the program or imposition of a civil money penalty under §278.6 of this chapter, except for disqualification actions imposed under §278.6(e)(8) of this chapter.

(3) Denial of all or part of any claim asserted by a firm against FNS under §278.7(c), (d), or (e);

(4) Assertion of a claim under §278.7(a); or

(5) Forfeiture of part or all of a collateral bond under §278.1, if the request for review is made by the authorized firm. The administrative review officer shall not accept requests for review made by a bonding company or agent.

(b) Authority.

The determination of the administrative review officer shall be the final administrative determination of the Department, subject, however, to judicial review under section 14 of the Food Stamp Act and subpart C of this part.

§279.4 Rules of procedure.

Rules of procedure for the orderly filing and disposition of requests for review of firms submitted in accordance with §279.5 are issued in subpart B of this part. The Administrator, FNS, may later issue amendments to any rules of procedure which are appropriate.

Subpart B -- Rules of Procedure

§279.5 Manner of filing requests for review.

(a) Addressing requests for review.

Requests for review submitted by firms shall be mailed to or filed with Director, Administrative Review Branch, U.S. Department of Agriculture, Food and Nutrition Service, Room 1002, 3101 Park Center Drive, Alexandria, Virginia 22302.

(b) Content of requests.

Requests for review shall be in writing and shall state the name and business address of the firm involved, and the name, address and position with the firm of the person who signed the request. The request shall be signed by the owner of the firm, an officer or partner of the firm, or by counsel, and need not be under oath.

(c) Time limit for requesting review.

A request for review shall be filed with the Director, Administrative Review Branch, within 10 days of the date of delivery of the notice of the action for which review is requested. For purposes of determining whether a filing date is timely:

(1) The filing date shall be the postmark date of the request, or equivalent if the written request is filed by a means other than mail;

(2) In computing the 10-day period, the day of delivery of the notice of the action for which review is requested may not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. In that case, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. As used in this paragraph, "legal holiday" includes New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President or the Congress of the United States.

§279.6 Content of request for review.***(a) Identifying the request.***

Requests for review shall clearly identify the administrative action from which the review is requested. This identification shall include the date of the letter or other written communication notifying the firm of the administrative action, the name and title of the person who signed the letter or other communication, and whether the action under appeal concerns a denial of an application or a withdrawal of authorization to participate, a disqualification from further participation, a civil money penalty, or a denial of all or any part of a claim or a fine.

(b) Supporting the request.

The request shall include information in support of the request showing the grounds on which review is being sought, or shall state that supporting information will be filed in writing at a later date. In the latter case, the review officer shall notify the firm of the date by which the information must be filed. The firm requesting review may ask for an opportunity to appear before the review officer in person. However, any information submitted in person shall, if directed by the review officer, be put in writing by the firm and filed with the review officer within a period which the review officer shall specify.

§279.7 Action upon receipt of a request for review.

(a) Holding action.

Upon receipt of a request for review of administrative action, the review officer shall notify the appropriate FNS regional office, in writing, of the action under review, and shall direct that the administrative action be held in abeyance until the review officer has made a determination. However, in cases of permanent disqualification under §278.6(e)(1) of this chapter, the administrative action shall not be held in abeyance pending such a review determination. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be held liable for the value of any sales lost during the disqualification period. If the administrative action in question involves a denial of approval of an application to participate in the program, a denial of a claim brought by a firm against FNS, or the forfeiture of a collateral bond, the review officer shall direct that the firm not be approved for participation, not be paid any part of the disputed claim, or not be reimbursed for any bond forfeiture, until the review officer has made a determination. In any case, notice to the appropriate FNS office shall be accompanied by a copy of the request filed by the firm.

(b) Filing supporting information.

If the request filed by the firm includes a request for an opportunity to file written information in support of its position at a later date, the administrative review officer shall promptly notify the firm of the date by which the information shall be filed. If the firm fails to file any information in

support of its position by the designated date, the information submitted with the original request shall be considered to be the only information submitted by the firm. In that case, if no information in support of the firm's position was submitted with the original request, the action of the appropriate FNS regional office shall be final.

(c) Failure to meet with review officer.

If the firm filing the request for review asks to appear before the administrative review officer in person, the review officer shall promptly notify the firm of the date, time and place set for the appearance. If the firm fails to appear before the administrative review officer as specified, any written information timely submitted in accordance with this section shall be considered to be the only information submitted by the firm.

(d) Basis for regional office determination.

The administrative review officer shall require the appropriate FNS regional office to promptly submit, in writing, all information which was the basis for the administrative action for which the review has been requested.

§279.8 Determination of the administrative review officer.

(a) Basis for review officer determination.

The administrative review officer shall make a determination based upon:

- (1)** The information submitted by the appropriate FNS office;
- (2)** Information submitted by the firm in support of its position; and

(3) Any additional information, in writing, obtained by the review officer from any other person having relevant information.

(b) Review of denial of application or withdrawal of approval.

In the case of a request for review of a denial of an application or withdrawal of approval to participate in the program, the determination of the administrative review officer shall sustain the action under review or shall direct that the firm be approved for participation.

(c) Review of disqualification or civil money penalty or fine.

In the case of a request for review of action disqualifying a firm from participation in the program or assessing a civil money penalty or fine against the firm, the determination of the administrative review officer shall sustain the action under review or specify a shorter period of disqualification or a reduced civil money penalty or fine, direct that an official warning letter be issued to the firm in lieu of any period of disqualification or civil money penalty or fine, or direct that no administrative action be taken. The administrative review officer may change a disqualification of a firm selling a substantial variety of staple foods to a civil money penalty if the review officer receives information that the disqualification would cause a hardship to participating households because there are no other firms in the area selling as large a variety of staple food items at comparable prices, and this information was not available to the appropriate FNS office when the appropriate FNS office made its determination to disqualify the firm. In

such a case, the administrative review officer, before he/she makes a determination, shall provide the information to the appropriate FNS office, which shall report to the administrative review officer whether the new information warrants a civil money penalty in lieu of disqualification. If the administrative review officer determines that a civil money penalty in lieu of a disqualification is warranted, the review officer shall determine the amount of the penalty in accordance with §278.6.

(d) Review of denial of claim.

In the case of a request for review of a denial of all or part of a claim of a firm, the determination of the administrative review officer shall sustain the action under review or shall specify the amount of the claim to be paid by FNS.

(e) Notice of review officer determination.

The administrative review officer shall notify the firm of the determination by certified mail. The notification shall be sent to the representative of the firm who filed the request for review.

(f) Notifying the appropriate FNS office.

The administrative review officer shall send a copy of the notification to the firm to the appropriate FNS office, which shall take any action, which may be necessary to comply with the determination of the review officer.

(g) Effective date.

The determination of the administrative review officer shall take effect 30 days after the date of delivery of the determination to the firm.

§279.9 Legal advice and extensions of time.

(a) Advice from Office of the General Counsel.

If any request for review involves any doubtful questions of law, the administrative review officer shall obtain the advice of the Department's Office of the General Counsel.

(b) Extensions of time.

Upon timely written request to the administrative review officer by the firm requesting the review, the administrative review officer may grant extensions of time if, in the review officer's discretion, additional time is required for the firm to fully present information in support of its position. However, no extensions may be made in the time allowed for the filing of a request for review.

Subpart C -- Judicial Review

§279.10 Judicial review.

(a) Filing for judicial review.

Except for firms disqualified from the program in accordance with §278.6(e)(8) of this chapter, a firm aggrieved by the determination of the administrative review officer may obtain judicial review of the determination by filing a complaint against the United States in the U.S. district court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. The complaint must be filed within 30 days after the date of delivery or service upon the firm of the notice of determination of the administrative review officer in accordance with

§279.8(e); otherwise the determination shall be final.

(b) Summons and complaint.

Service of the summons and complaint in any such action shall be made in accordance with the rules of civil procedure for the U.S. district courts. The copy of the summons and complaint required by the rules to be served on the officer or agency whose order is being attacked shall be sent by registered or certified mail to the person in charge of the applicable regional office of FNS.

(c) Trial de novo.

The suit in the U.S. district court or in the State court, as the case may be, shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action. If the court determines that the administrative action is invalid, it shall enter a judgment or order which it determines is in accordance with the law and the evidence.

(d) Stay of action.

During the pendency of any judicial review, or any appeal there from, the administrative action under review shall remain in force unless the firm makes a timely application to the court and after hearing thereon, the court stays the administrative action after a showing that irreparable injury will occur absent a stay and that the firm is likely to prevail on the merits of the case. However, permanent disqualification actions taken in accordance with §278.6(e)(1) of this chapter shall not be subject to such a stay of administrative action. If the disqualification action is reversed through administrative or judicial review, the Secretary shall not

be liable for the value of any sales lost during the disqualification period.

§279.11 [Intentionally omitted as not relevant to store eligibility]

There may be procedures/policies in effect that are not included in this booklet. This is because some provisions are required, by law, to be placed into effect prior to the publication of final regulations. This booklet contains only those procedures/policies for which we have formally published final regulations to amend the official Code of Federal Regulations. Also, this booklet does not contain all Food Stamp Program rules. Information that is not related to the participation of retail food stores, wholesale food concerns, and financial institutions is intentionally omitted. Also, there are some paragraphs which include references to regulatory sections that may not be included in this booklet. Readers can refer to the official Code of Federal Regulations (CFR), Title 7 CFR Parts 210-299, to get the full context of the information in this booklet. For more information on how to obtain or look at a copy of the CFR contact the U.S. Government Printing Office at:

On-line web site: <http://www.access.gpo.gov/nara/cfr/index.html>
 Email address: gpoaccess@gpo.gov
 Phone Number: 1-888-293-6498.
 Or Write to: Superintendent of Documents
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For further information about the Food Stamp Program, visit the Food and Nutrition Service website at: www.fns.usda.gov/fsp